DEPOSITION SKILLS TRAINING SYLLABUS
Professor Yvonne Tamayo
Spring 2010

BACKGROUND

In this course, we will introduce you to the crucial skills of conducting and defending depositions in a skills-based immersion environment using a simulated case file. You will work in teams of two and will litigate against your fellow classmates who will be assigned as opposing parties in the simulated case. You will utilize friends and/or family members as volunteers to play the roles of witnesses.

You will each be given an opportunity to:

1) Prepare a deposition strategy;
2) Prepare two witnesses for deposition;
3) Conduct and defend depositions of a lay and an expert witness;
4) Draft a deposition subpoena with production of documents;
5) Draft objections to a deposition subpoena;
6) Review and assess your performance.

LOGISTICS

Class Times: Tuesdays 3:30- 5:30 P.M.
Class Location: Room 121

Teams:
1) Megan Banks (for Plaintiff), Jennifer Betts (for Plaintiff)
2) Wyatt Baum (for Defendant), Tonyia Brady (for Defendant)
3) Thomas Dimitre (for Plaintiff), Rachel Twenge (for Defendant)
4) Kate Triana (for Defendant), Gregory Warner (for Defendant)

Professor’s Contact Information:

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COURSE MATERIALS

We will be working with the NITA-published simulated sexual harassment case of Polisi v. Clark and Parker & Gould.

*** Students Banks, Betts, Dimitre and Twenge should purchase the Plaintiff’s materials (Bocchino, Sonenshein, Polisi v. Clark and Parker & Gould, Developing Deposition Skills, Plaintiff’s Materials, 2d. ed. (NITA Publication)).

**** Students Baum, Brady, Triana and Warner should purchase the Defendant’s materials (Bocchino, Sonenshein, Polisi v. Clark and Parker & Gould, Developing Deposition Skills, Defendant’s Materials, 2d. ed (NITA Publication)).

The text book we will be using is: Malone, Hoffman and Bocchino, The Effective Deposition, Rev. 3d. ed. (NITA Publication) (hereinafter referred to as “Malone”). All three are on sale in the university bookstore. Also, you need a copy of the Federal Rules of Civil Procedure (OK if are from 2008 or 2009). For all deadlines and procedures not specified expressly by the Professor, you are required to follow the Federal Rules of Civil Procedure.

PLEASE DO NOT READ THE SIMULATED CASE FILE UNTIL AFTER THE FIRST DAY OF CLASS. WE WANT YOUR LITIGATION EXPERIENCE TO BE AS REALISTIC AS POSSIBLE (SEE HONOR CODE SECTION BELOW).

You are responsible for procuring two friends or family members to serve as witnesses.1 We will be using webcams to record your depositions directly to your computers, so if you do not already have a webcam with the relevant supporting software, you will have to buy one or work with WITS to borrow a webcam and install the necessary software onto your computer.

GRADING

This is a graded course. The course grade will be based on a point system. The total (possible points) is 100. The breakdown is as follows:

- Professionalism, Class Preparation and Participation: 10 points
- Deposition of Lay Witness: 15 points
- Deposition of Expert Witness: 15 points
- Defense of Deposition of Lay Witness: 15 points
- Defense of Deposition of Expert Witness: 15 points
- Written Documents: 30 points

Also, assuming you draft at least 20 pages of high quality legal documents through this course, you will be eligible for credit towards your practical skills (“2L”) writing requirement.

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1 Each student will be responsible for deposing and then defending one lay and one expert witness. You are responsible for finding volunteers to act as the witnesses you will be defending. The volunteers cannot be a member of this class. You are obligated to prepare and produce your witnesses for deposition. Preparation means that witnesses are fully prepared to serve in their designated roles so as to simulate the deposition of a real witness as much as possible. Although it is customary to depose plaintiff’s witnesses first, you should confer with opposing counsel and your witnesses to arrange a convenient schedule.
HONOR CODE

This course is intended to simulate the experience of representing real clients in a sexual harassment case. Accordingly, plaintiff’s and defendant’s counsel will each be given information that the other side does not have. These materials are confidential. It is a violation of the honor code for you to share or distribute these materials or to divulge their content to any other student enrolled in this course now or in the future. Doing so will be considered a breach of attorney-client privilege and could lead to expulsion from the course and a failing grade for all involved. The only exception to this rule is that as part of the representation process, you will discuss confidential client information with your litigation partner.

CLASS SCHEDULE

Pre-Class Assignment: Read Malone, Chaps. 1-3 for the first class!

Class # 1: Introduction & Orientation

Class Schedule/Agenda:
- Introductions
- Review course syllabus
- Overview of pretrial procedure
- Overview of depositions
- Practice Exercise--Introductory and Background Questions in Depositions
  - Assume that your partner is a plaintiff who has been in a car accident. Depose that student for 20 minutes and then switch roles (40 minutes total). You do not need to get into the facts of the case. You just need to prepare to start the deposition and the basic background facts (age, education, work experience, etc.). This is a chance for you to get to know each other better, so have fun!

Homework:
- Identify volunteers to serve as your two witnesses
- Contact opposing counsel to schedule first deposition
- Read Materials for Polisi v. Clark
- Read Malone, Chaps. 4, 5

Class #2: Deposition Strategies and Outlines

Class Schedule/Agenda:
- Guidance on developing a discovery plan
- Guidance on deposition strategies and outlines
- For the second half of class, all plaintiff’s counsel and all defense counsel will begin brainstorming deposition strategies in Polisi v. Clark

Homework:
- Read Malone, Chaps. 6, 7, 8
Draft deposition strategy memos for the lay witness you are deposing and the lay witness you are defending

Class #3: **Beginning Depositions and Questioning Techniques**

Class Schedule/Agenda:
- Guidance on beginning a deposition
- Guidance on deposition questioning techniques
- Break into small groups and practice different deposition questioning techniques

Homework:
- Read Malone, Chap. 9, 18
- Begin drafting deposition outline

Class #4: **Working with Documents & Recording Depositions**

Class Schedule/Agenda:
- Guidance on Using Documents—Review when, why and how to use documents in depositions
- Guidance on recording depositions
- Class drills on laying foundation, etc.
- During the second half of class, Defendant’s counsel and Plaintiff’s counsel will select documents and practice using them during depositions
- Submit lay witness strategies

Homework:
- Read Malone, Chaps. 10, 13, 14
- Continue drafting deposition outline
- Draft subpoena (with documents) for expert witnesses

Class #5: **Preparing Witnesses and Defending Depositions**

Class Schedule/Agenda:
- Guidance on preparing your deposition witness
- Guidance on defending a deposition
- During second half of class, break off with partners and practice defending the deposition of the lay witnesses you are scheduled to attend. Professor Tamayo will circulate to provide supervision and support.

Homework:
- Read Malone, Chaps. 11, 12
- Finalize deposition outlines for lay witnesses
- Finish drafting subpoena for expert witnesses
- Make sure that you reserve and check out a webcam from WITS and download any software necessary to record your deposition
Prepare your lay witness

Class #6: Depositions of Lay Witnesses

Class Schedule/Agenda:
- We will be breaking into groups of two and conducting mock depositions of your lay witnesses (half of you will be deposing and the other half will be defending; next week you will reverse roles). The depositions will be recorded by you on your computer. Professor Tamayo will be circulating to provide supervision and support.
- Serve expert witness subpoenas no later than the start of class today

Homework:
- Watch your video of your deposition performance and complete the two-page self assessment and one-page assessment of opposing counsel
- Prepare for next week’s deposition

Class #7: Depositions of Lay Witnesses (Cont.)

Class Schedule/Agenda:
- You will continue to conduct and defend mock depositions of your lay witnesses (reverse your roles from the last class). The depositions will be recorded by you on your computer. Professor Tamayo will be circulating to provide supervision and support.
- All objections to expert witness subpoenas must be served within seven days of service of the subpoena, and in no event later than the start of class today (assuming it was served just before the start of the last class)

Homework:
- Watch your video of your second deposition performance and complete the two-page self assessment and one-page assessment of opposing counsel
- Draft objections to subpoena for expert witness deposition (must be served within seven days of service of subpoena)

Class #8: Review of Lay Witness Depositions

Class Schedule/Agenda:
- We will be debriefing your performances of lay witness depositions. Please bring your self assessments and the recordings of your depositions.

Homework:
- Read Malone, chap. 19
- Begin drafting expert witness depositions strategies (taking and defending)
Class #9:  Deposing Expert Witnesses

Class Schedule/Agenda:
- Guidance on deposing expert witnesses
- During second half of class, plaintiff’s counsel and defense counsel develop strategies for expert witness depositions

Homework:
- Read Malone, chaps. 15, 16, 17
- Continue drafting expert witness depositions strategies
- Begin drafting deposition outline for expert witness

Class #10:  Using Depositions Before and After Trial

Class Schedule/Agenda:
- Guidance on using depositions before trial
- Guidance on using depositions at trial
- Guidance on perfecting deposition transcripts/records
- During second half of class, we will practice questioning and defending expert witnesses
- Submit expert witness deposition strategies

Homework:
- Finish drafting expert witness deposition outlines
- Prepare expert witness

Class #11:  Expert Depositions

Class Schedule/Agenda:
- We will be breaking into groups of two and conducting mock depositions of your expert witnesses (half of you will be deposing and the other half will be defending; next week you will reverse roles). The depositions will be recorded by you on your computer. Professor Tamayo will be circulating to provide supervision and support.

Homework:
- Watch your video of your third deposition performance and complete the two-page self assessment and one-page assessment of opposing counsel
- Prepare for next week’s deposition

Class #12:  Expert Depositions (cont.)

Class Schedule/Agenda:
• You will continue to conduct and defend mock depositions of your expert witnesses (reverse your roles from the last class). The depositions will be recorded by you on your computer. Professor Tamayo will be circulating to provide supervision and support.

Homework:
• Watch your video of your fourth deposition performance and complete the two-page self assessment and one-page assessment of opposing counsel
• Create a portfolio for this course containing all of the materials embodying your work
• Sign up for an exit interview with Professor Tamayo and bring your portfolio to that interview

Class #13: Review of Expert Witness Depositions
Class Schedule/Agenda:
• We will be debriefing your performances of expert witness depositions individually and as small groups. Please bring your self assessments and the recordings of your depositions.
• Course wrap-up and feedback

Homework:
• Complete your exit interview with Professor Tamayo