

DEPAUL UNIVERSITY COLLEGE OF LAW

Fall 2009
Monday 5:50-8:30
O'Malley 631

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PRE-TRIAL LITIGATION STRATEGY-CIVIL

REQUIRED TEXT:

Illinois Court Rules and Procedures - Volume I - State (2009)

Scalia, Antonin & Garner, Bryan A., *Making Your Case*,
St. Paul, MN, Thomson/West, 2008

White, E. B., *Charlotte's Web*, New York, New York, HarperCollins, 1952
(available after September 1 at Barnes & Noble, 1 E. Jackson Blvd.)

Illinois Rules of Professional Conduct, effective January 1, 2010 (available
at www.state.il.us/court)

Case packets will be distributed in the first class.

Other readings, including cases and articles will be handed out periodically throughout the semester. Students are expected to complete readings assigned from week to week.

RECOMMENDED TEXT:

Illinois Practice: Civil Procedure Before Trial (Volumes 3 and 4),
Richard A. Michael, West Publishing Company, (1989, with latest pocket part)

The Reflective Counselor, Daily Meditations for Lawyers, F. Gregory Coffey
and Maureen C. Kessler, ABA Publishing, (October 25, 2008)

COURSE DESCRIPTION AND OBJECTIVES:

This litigation course is designed to introduce students to practical, legal, and strategic considerations which influence pretrial litigation. Students will be involved in total case management from pre-filing stages to discovery and motion practice. To cultivate these skills, students will manage an actual case from the pleading to pretrial certification. In addition, students will participate in in-class role playing and discussions each week. The specific areas of concentration will include: pretrial investigation, pleadings, state, motion and discovery practice, experts, and orders.

The course objectives include:

- To introduce the student to practical and ethical considerations which influence strategy;
- To develop advocacy skills and motion practice, including both written and oral skills;
- To involve the student in total case management from pre-filing stages to trial certification;
- To provide the student with a basic framework for developing a pretrial strategy that emphasizes both settlement potential and comprehensive trial preparation;
- To understand the pressures, politics, and responsibilities of handling a complex case, particularly as young associates; and
- To demonstrate the practical applications of the Illinois Code of Civil Procedure and Illinois Supreme Court Rules.

GRADING:

Your final grade will be based upon your handling of the case, quality and accuracy of written materials presented, oral and written advocacy skills, strategy, organization, and class participation.

SCHEDULE:

August 24

Reading Assignment: None

In Class: Introduction to litigation planning and strategy; distribution of case packets and designation of teams.

For Next Class: Read case file that has been assigned. Read Illinois Supreme Court's decisions, *Rowe v. State Bank of Lombard* and *Abbasi v. Paraskevoulakas*. Think about case strategy in terms of the following factors:

- (a) The facts;
- (b) Parties and potential witnesses;
- (c) Issues;
- (d) Applicable law and burden of proof;
- (e) Possible themes;
- (f) Strengths and weaknesses of case; and
- (g) Venue.

August 31

Reading Assignment: Sections 2-101, 2-104, and 2-601 through 2-614 of the Illinois Code of Civil Procedure; Illinois Supreme Court Rule 137.

Recommended Reading: Michael, Chapter 14 (*Forum non Conveniens*, Chapter 23 (Pleading in General).

In Class: Be prepared to discuss case strategy generally, based on factors enumerated above and to discuss drafting of complaints.

For Next Week: Plaintiff shall prepare a complaint. The Shegich Defendants shall prepare third-party complaint.. All pleadings shall be served by the Sunday before class. McGarry Defendants shall be given legal issue to research and discuss.

September 14

Reading Assignment: Sections 2-615 through 2-619 of the Illinois Code of Civil Procedure; *Charlotte's Web*, Chapters 1 and 2.

Recommended Reading: Michael, Chapters 24.1 - 24.6 (Pleadings Which State a Cause of Action), 24.11, 25.4, 25.5 (Defensive Pleadings).

In Class: Be prepared to discuss answers, responsive pleadings, and third party practice.

For Next Week: Defendants shall prepare and file responsive pleadings to Plaintiff's complaint; Plaintiff shall be given legal issue to research and discuss. Students will be assigned miscellaneous motion for presentation on **September 21, 2009**.

September 21

Reading Assignment: Sections 2-613(d) of the Illinois Code of Civil Procedure. Illinois Supreme Court Rules 201, 218, 219; *Charlotte's Web*, Chapters 3 and 4.

Recommended Reading: Michael, Chapter 25.1 - 25.3 (Defensive Pleading).

In Class: Defendant will present motions to dismiss, if any. All motions must be accompanied by notice of motion and certificate of service. Students will present their miscellaneous motions. At conclusion of call, we will discuss motion practice and introduction to discovery.

For Next Week: Plaintiff to respond to motions to dismiss complaint; Defendant to be given legal issue to research and discuss.

September 28

Reading Assignment: Section 2-616 of the Illinois Code of Civil Procedure, Illinois Supreme Court Rules 202-214; *Charlotte's Web*, Chapters 5 and 6.

Recommended Reading: Michael, Chapters 33 (Other Discovery devices), 34 (The Scope of Discovery).

In Class: Hearings on pending motions to dismiss. Introduction to written discovery.

For Two Weeks Hence: Plaintiff to tender 20 interrogatories and 20 production requests to Defendants; Defendant to tender 10 interrogatories and 10 production request to Plaintiff and 10 interrogatories and production requests to Third Party Defendant. All requests to be served by **October 12, 2009**; proof of service of each discovery document.

October 5

Reading Assignment: Illinois Supreme Court Rules 304-308; Rules of Professional Conduct, Preamble, Scope, Terminology, 1.1, 1.2, 1.3, 1.4, 1.6, 3.3, 3.4, 4.2, 4.3, 4.4; Sections 2-701, 11-101 to 11-110; Sections 2-604.1; *Charlotte's Web*, Chapters 7 and 8.

In Class: Drafting orders; ethical issues arising in pretrial civil litigation; Discussion of miscellaneous civil procedure provisions and vacating orders; Michael, Chapter 24.8 (Pleading Wilful and Wanton Misconduct, 41 (§2-619), 42.2 (Voluntary Non-Suit).

For Next Week: Continue drafting discovery requests.

October 12

Reading Assignment: Illinois Supreme Court Rules 215 and 216, 201(c)(i), 201(k), 201(n), 237(a); *Charlotte's Web*, Chapters 9 and 10.

Recommended Reading: Michael, Chapter 35 (Judicial Control Over Discovery).

In Class: Discussion of discovery requests, objections, discovery from non-parties.

For Next Week: Responses/objections to discovery due on **October 19, 2009**.

October 19

Reading Assignment: Illinois Supreme Court Rules 202-212; *Charlotte's Web*, Chapters 11 and 12.

Recommended Reading: Michael, Chapter 32 (Depositions).

In Class: 201(k) conferences held to resolve discovery differences; motions to compel; introduction to depositions.

For Next Week: Defendants and Plaintiff to prepare for witnesses to be identified.

October 26

Reading Assignment: *Charlotte's Web*, Chapters 13 and 14.

In Class: Depositions of witnesses.

For Two Weeks Hence: Legal memorandum on evidentiary or discovery issue (approximately 5 pages). (Memorandum is due on or before noon on **November 6, 2009** and must be distributed to team leader no later than noon on **November 6, 2009**.)

November 2

Reading Assignment: Illinois Supreme Court Rules 213 and 218, and cases interpreting Rule 213; *Charlotte's Web*, Chapters 15 and 16.

In Class: Discussion of depositions taken week before; introduction to opinion witnesses.

For Next Week: Continue working on legal memorandum on evidentiary or discovery issue.

November 9

Reading Assignment: *Charlotte's Web*, Chapters 17 and 18.

In Class: Students' presentation of miscellaneous memoranda assigned on October 26; discussion of same; discussion of Rule 213.

For Next Week: Parties to disclose one retained opinion witness pursuant to Illinois Supreme Court Rule 213(g).

November 16

Reading Assignment: Section 2-1005, 2-1009 of the Illinois Code of Civil Procedure, Illinois Supreme Court Rule 191; *Charlotte's Web*, Chapters 19 and 20.

Recommended Reading: Michael, Chapters 38.4--38.7, 39 (Motion for Summary Judgment).

In Class: Discussion of summary judgment and voluntary non-suit; discussion of expert witness disclosure and strategies.

For Next Week: Prepare list of questions for expert's deposition (subject areas to be broken down and divided among parties).

November 23

Reading Assignment: *Charlotte's Web*, Chapters 21 and 22.

In Class: Deposition of experts.

For Next Week: Review pleadings, discovery, and depositions actually filed in case.

November 30

Reading Assignment: TBA

In Class: Discussion of experts' depositions and what actually happened in case.