

# Pretrial Practice – Fall 2022

Law 368-R01

## COURSE SYLLABUS

Meets Mondays 4 pm – 6 pm

Professor: Joe Esposito

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### A. Course Overview

The purpose of this course is to teach the nuts and bolts of pretrial practice. As fewer cases reach trial, there has been increased emphasis on the pretrial phase. But pretrial practice has always been critical because what transpires pretrial is what leads to a successful dispositive motion, a favorable settlement, a winning verdict -- or defeat. If you plan to do civil litigation, this is what you will spend the vast majority of your career doing.

The goal is to familiarize you with the fundamentals of the key aspects of pretrial practice, including pleadings, discovery, motions practice, and settlement, as well as some of the other issues and challenges that litigators regularly encounter. We will endeavor to make this course very practical, as reflected in the assignments and in-class exercises: drafting a complaint and written discovery requests; drafting a short legal research memo; writing and arguing a motion to compel or opposition to a motion to compel; conducting a short deposition; and negotiating a settlement. This will also afford you an opportunity to work on your litigation writing, an invaluable skill.

### B. Text and Materials

We will use **Pretrial, Mauet and Marcus, 10th Edition**, which is very informative and an easy read. Mauet also has several case files, which we will use for all of the

assignments (except the legal research memo). We will divide the class into four small groups and assign one case to each group for purposes of three of the written assignments (not the legal research memo) and all of the in-class assignments. Please note that both counsel may stipulate to additional facts (beyond what is contained in the case files) if you wish, but you must notify me by email in advance, copied to your opponent – we can discuss.

You should also have the Federal Rules of Civil Procedure. I will provide via TWEN several examples of complaints, interrogatories and document requests, motions to compel and oppositions, and deposition transcripts – please keep in mind that these are examples, and some may be outdated or not quite perfect. Moreover, these are a resource for you; you need not read them all.

### C. Assignments

Each student will:

1. Prepare a short (no more than 4 pages) complaint - 10% of grade. You have some license with the facts in order to demonstrate federal jurisdiction.
2. Prepare a short set of interrogatories and document requests – (no more than 8 interrogatories and 8 document requests, but at least 6 of each; general instructions and directions not necessary) - 15% of grade.
3. Draft a motion to compel or opposition to motion to compel (5 page maximum), and argue the motion (10-12 minutes) – 25% of grade (I will provide suggested topics for motions; you and your opponent must agree well in advance – and notify me by email – on the issue for the motion, specifically, what the movant is seeking, and what the grounds are for the objection).

4. Conduct a 25-30-minute deposition of an opposing witness (you and your opponent must agree in advance on which witnesses to depose – both sides may use all of the materials in the case file) – 20% grade.
5. Draft a legal research memo (4 page maximum) concerning the law on how the parts and subparts of an interrogatory are counted for purposes of the limits on the number of interrogatories permitted – 15% of grade.
6. Conduct a 20-25 -minute settlement negotiation (the time covers both students) – 10% of grade.
7. Class participation (during the lectures and critiquing the arguments, depositions, and negotiations of your fellow students) will represent 5% of the grade.

On each of the assignments, you will be working on your own (no team projects), but for the motion/opposition, deposition, and negotiation, you will have an opponent, so you will need to coordinate. We will assume your case is in the Eastern District of Virginia.

Please put your name on the top of the first page of the written assignments.

Written assignments are due by the end of the class on the date indicated on the Class Schedule (see attached) – unless an extension has been requested, late assignments may be subject to a reduction in the grade.

D. Contact

You may contact me by email (**please use both my mediation and GMU emails**), or by phone. I am happy to meet after class, or at other times if arranged in advance.

If anything is unclear, **please ask questions** – during class, by email, by phone, or before/after class. I have been teaching long enough to know that if you have a question, odds are high that some of your classmates have the same question – so ask it.

E. Learning Outcome Statements

At the conclusion of this course, the students will:

1. Have a better understanding of the flow, sequence, timing, and purpose of various aspects of pretrial practice.
2. Have experience preparing some of the documents central to pretrial practice.
3. Have experience with depositions, motions arguments, and settlement negotiations.
4. Learn many of the practical nuts and bolts of pretrial practice to minimize the sense of “deer in headlights” in the early years of their careers.

## CLASS SCHEDULE

WEEK		ASSIGNMENT DUE DATES
Aug 22	<p>Overview of Course and Class Assignments (dividing class into small groups and assigning cases for purposes of complaints, discovery, motion/oppositions, depositions and negotiations)   Planning and Pretrial Issues   Informal Fact Investigation   Know Rules, Court, Judge   Complaint   Answer   Litigation Hold   Removal</p> <p>– Mauet, pp 3-18, 19-55, 57-83, 85-118, 121-149, 150-167, 262-266, 362-367</p>	
Aug 29	<p>Motions   Initial Disclosures   Sequence of Discovery   Coordination with Co-Defendants   Experts   Interrogatories   Document Requests</p> <p>– Mauet, pp 191-277, 343-362</p>	
Sept 12	<p>Requests for Admission   Physical Inspection   Objections   Overview of Depositions   Deposition Preparation   Witness Preparation   Defending Depositions   Rule 30 (b) 6 Depositions   Who to Depose and Why</p> <p>– Mauet, pp 238-240, 255-257, 277-330</p>	<p>Sept 12: Complaint</p> <p>- students will draft a Complaint based on case assigned</p>
Sept 19	<p>Expert Depositions   Document Production   ESI   Use of Vendor   Preserving Evidence   Spoliation</p> <p>– Mauet, pp 259-277</p>	<p>Sept 19: Interrogatories and Document Requests</p> <p>-students will draft written discovery based on case assigned and side selected</p>
Sept 26		
Oct 3	<p>Depositions – each student will take and defend a deposition.</p>	<p>Oct 3: Half of class will draft Motions to Compel (and serve opponent)</p>
Oct 11	<p>Order: Case 3 on Sept 26; Case 4 on Oct 3; Case 5 on Oct 11; and Case 6 on Oct 17.</p>	
Oct 17		
	<p>At the beginning of each deposition day, one student will give a short, two or three sentence summary of the case, so that the students on the other cases will have some understanding of the issues and players, in order that their critiques will be better grounded.</p>	

Oct 24	<p>Summary Judgment Motions/Settlement and Mediation -Mauet pp 368-381, 400-432</p>	<p>Oct 24: Other half of class will draft Opposition (and serve opponent)</p>
Oct 31 Nov 7	<p>Motion to Compel Oral Arguments -Order: Cases 4 and 5 on Oct 31; 6 and 3 on Nov 7</p>	<p>Nov 7: Legal research memo on how parts and subparts of an interrogatory are counted for purposes of the limits on the number of interrogatories permitted.</p>
Nov 14 Nov 21	<p>Negotiations – Order: Cases 5 and 6 on Nov 14, Cases 3 and 4 on Nov 21. Class Wrap-up</p>	