

**Deposition Practice**  
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**Summer 2009**

**Text:**

*Pretrial*, Thomas A. Mauet 7th ed., (2008), ISBN: 978-0-7355-7203-4

**Class Goals & Objectives:**

The primary objectives of this course are to provide information and skills training on how to take and defend effective depositions. Students will learn the basics of preparing and performing depositions of lay and expert witnesses including obtaining and developing facts, objections, preserving testimony, and using depositions at trial. The course will also cover how to deal well with depositions involving documents and techniques for deposing a difficult witness.

**Attendance Policy:**

Please make every effort to attend class and to arrive at class on time. The Registrar's attendance sheet will be circulated for initialing during each class. Missing two or more hours in this course is regarded as excessive absence.

**Testing & Grading:**

There will be a final exam that will constitute 100% of the final grade and will be a take-home one-hour open book exam due as a post to TWEN no later than 5:00 p.m. on Wednesday, July 22.

**Class Schedule:**

8:30 a.m. – 3:30 p.m. in the Moot Court Room (lunch break 11:45 a.m.-12:15 p.m.)  
Sunday, July 12 and Sunday, July 19, 2009.

**Assignments:**

**Class 1: July 12**

**Readings:**

*Pretrial*:

- Preface: pp. xxiii - xxiv
- Chapter I: pp. 3-18
- Chapter IV: pp. 100
- Chapter VI: pp. 185-219; §6.9 on Depositions, pp. 269-307

**Written Assignment for July 12:**

None.

**Class Discussion:**

1. Deposition Practice: an Overview
2. Introduction to Litigation Planning
  - a. Attorney-client relationship

- b. Elements of potential claims, remedies, defenses and counterclaims
  - c. Sources of proof
  - d. Formal discovery methods
    - i. Initial disclosures
    - ii. Interrogatories
    - iii. Requests for production of documents and tangible things
    - iv. Depositions
    - v. Physical and mental examinations
    - vi. Requests for admission of facts
3. Litigation Evaluation and Strategy
- a. Developing a litigation strategy
    - i. Costs and timing of litigation
  - b. Planning the discovery
4. Discovery Basics
- a. Rules and ethics
  - b. Scope of discovery
  - c. Experts
  - d. A privileges overview
    - i. Attorney-client
    - ii. Spousal
    - iii. Doctor-patient
    - iv. Other
  - e. Discovery strategy
    - i. The facts
    - ii. The purpose of a deposition
    - iii. Costs and other important considerations
    - iv. The discovery plan
    - v. Disclosures
  - f. Stipulations
5. Depositions, Part One
- a. The law - an overview
    - i. The Federal Rules of Civil Procedure and deposition practice
    - ii. Minnesota's Rules of Civil Procedure - a brief discussion
    - iii. Notice and limits
  - b. Deposition preparation for you and your client
  - c. Admonitions
  - d. Forms of questions
  - e. Using documents

**Class 2: July 19**

**Readings:**

*Pretrial:*

- Chapter VIII: pp. 379-399
- Practice Appendix: pp. 425-458

Also:

- Review Federal Rules of Civil Procedure related to discovery (skim discovery rules 26-37 and read rules 30, 31, 32 and 37 on depositions more closely). Federal rules can be found at: <http://www.law.cornell.edu/rules/frcp/>
- Review Minnesota Rules of Civil Procedure related to discovery (skim Discovery Rules 26-37 and read Rules 30, 31, 32 and 37 on depositions more closely). Minnesota's rules can be found at: [http://www.courts.state.mn.us/Documents/0/Public/Rules/Civil\\_Rules\\_effective\\_01-01-2009\\_\(current\).pdf](http://www.courts.state.mn.us/Documents/0/Public/Rules/Civil_Rules_effective_01-01-2009_(current).pdf).

### Written Assignment for July 19:

**Due in class:** You are the attorney for the plaintiff, John Jones. Based on the portion of the *Jones v. Smith* litigation file set forth on pp. 391-424 and your knowledge from class thus far, outline the deposition of Susan Smith.

Please think through your goals for the deposition and the areas of questioning you want to focus on, and prepare a written outline of your questions. Plan to *use at least six documents during your questioning of the witness.*

### Class Discussion:

1. Depositions, Part Two
  - a. Objections
    - i. Why object
    - ii. The usual suspects - waivable
      1. assumes facts not in evidence
      2. mischaracterizes the testimony
      3. calls for privileged information
      4. counsel attempting to intimidate the deponent
      5. compound question
      6. vague
      7. leading
      8. calls for narrative answer
      9. argumentative
    - iii. The usual suspects - probably preservable
      1. irrelevant
      2. probative value outweighed by undo prejudice
      3. improper opinion
      4. lack of foundation/calls for speculation
      5. lack of authentication/foundation for document
      6. hearsay
    - iv. objections to improper answers
      1. moving to strike
    - v. Objecting wrongly

- vi. Responding to objections
  - b. When a deponent can refuse to answer
    - i. Claiming a privilege
      - 1. attorney-client
      - 2. spousal
      - 3. work product
      - 4. self-incrimination
      - 5. private information
    - ii. Responding to instructions not to answer
    - iii. Motions to compel
      - 1. by phone
      - 2. in court
    - iv. Terminating a deposition
      - 1. protective orders
  - c. The hostile/evasive witness
  - d. The "friendly" witness
  - e. Deposing expert witnesses
    - i. What makes an expert
    - ii. The reliability standard
    - iii. Pre-deposition disclosures
    - iv. Expert deposition questioning
    - v. The bias concern
  - f. Videotaped depositions
    - i. Why tape it
    - ii. Whose deposition would you tape
    - iii. Advantages and disadvantages of videotaping
    - iv. Defending the videotaped depo
  - g. Deposition summaries
2. Guide to Using Depositions
- a. Trial strategy planning
  - b. Using depositions before trial
    - i. Summary judgment motions
    - ii. Settlement negotiations
      - 1. How depositions affect settlements
      - 2. Pretrial settlement conferences
  - c. Witness preparation
  - d. Using depositions at trial
    - i. Substitute for live testimony
    - ii. Impeachment
    - iii. To refresh a witness' recollection
3. Deposition Outline Evaluation
- a. Deposition simulation using your prepared outline

b. In-class written self-review of your outline of the deposition of Susan Smith addressing the following:

(1) Identification of your goals for the part of the deposition that you addressed, noting how effective you were in achieving those goals. What factors hindered your ability to achieve your goals? What could you have done differently to be more effective?

(2) Identification of three questions you asked that could have been improved. For each such question, write out the question and answer in full, then describe the problem with the question (e.g. seeks privileged information; compound; confusing) and explain how the question should have been rephrased.

(3) Identification and a brief description of the strongest and weakest part of the deposition outline. Explain why the strong part went well and what you would do differently for the weak part.

4. The Rules, Redux

- a. Federal Rules of Civil Procedure
- b. Minnesota Rules of Civil Procedure

5. Wrap-up and Miscellaneous Information

- a. The ever-present issue of ethics
- b. Review of key deposition tips and pitfalls
- c. True stories highlighting the importance of being thorough but not ridiculous
- d. About the final exam