

# Discovery Practicum – Spring 2011

**Professor David Thomson**

F 1:30 – 4:00 p.m. – Room 270

## **COURSE POLICIES**

### **Course Overview and Learning Objectives**

This course is a practice-focused introduction to the discovery phase of litigation. Most “trial lawyers” spend most of their time in discovery for the various cases they manage, and this is why such lawyers more often refer to themselves as *litigators* – because they rarely try cases in court.

Indeed, discovery is the heart of civil litigation, and yet most law schools do not have many such courses. As a result, law graduates often enter law firms thinking they want to be litigators, but have only taken trial practice courses, and they find themselves unprepared to create the “bread and butter” documents of litigation: discovery documents. This course seeks to remedy that problem, and to prepare students for the bulk of the work they will do as litigators, as well as to understand the law, policy and strategy involved in the discovery phase of litigation.

To be more specific, the learning objectives for this course are that – by the end of the course – you will be able to:

- Understand and use the twelve Federal Rules of Civil Procedure that pertain to discovery
- Understand how and when to use the most common litigation documents
- Prepare such documents in a simulated environment
- Interpret discovery responses from opposing counsel
- Develop and adjust litigation strategy based on what you have learned
- Appreciate ethical dilemmas that arise in the discovery context
- Appreciate the complexities of, and developing law surrounding, electronic discovery
- Take and defend a deposition
- Negotiate a settlement with opposing counsel
- Agree upon terms for a settlement agreement, and draft it collaboratively

### **The Skills & Values Textbook**

The text for this course is Thomson, *Skills & Values: Discovery Practice* (LexisNexis/Matthew Bender 2010). This is a new kind of law school textbook which has a number of features that make it different from the typical text. First, it is a “hybrid” textbook – the print portion is only a part of the textbook, and the rest is online. You will find general background information about the book at this location on the web: [www.discoveryskills.com](http://www.discoveryskills.com) But the online portion of the text is not generally available – it is located on LexisNexis Webcourses, and you will need to enroll in the course to access

this additional part of the text. (Note: the “Enrollment code” is: Disco22DU) Second, because less of the text is printed and much more is online, the books in the series are significantly cheaper, and easier to carry around. Third, the online text includes rich problem set materials that are accessible to the Professor, portions of which I will be sharing with student attorneys on each side of the case during the semester. Fourth, because so much of the teaching material is online, each professor using the text can customize it to support their teaching in the way they see fit.

### **Communication**

Questions are always welcome in my class. Additionally, I am happy to speak with you outside of class. This fall, my office hours will be Tuesdays between 4:00 and 5:30 p.m. You can also fairly dependably find me in the office on Monday and Wednesday mornings, after 9. You are always welcome in my office – it is just good to find a mutually convenient time so we can both be focused on the discussion.

Of course, a good way to contact me is via E-mail. My office E-mail address is [dthomson@law.du.edu](mailto:dthomson@law.du.edu). Outside of class, I will often communicate with you through our Online Classroom in the Blackboard system, either as an announcement on the class web site or by E-mail. All mass E-mail messages to the entire class will be made via Blackboard. You may learn more about this class, and me, by visiting my faculty web site: [www.law.du.edu/thomson](http://www.law.du.edu/thomson).

### **Attendance**

Class meets on Fridays from 1:30 to 4 p.m. in Room 270. We will take a 10-minute break at approximately 2:45. Attendance is mandatory at all scheduled classes and all course conferences or activities outside of class time. Under ABA and DU College of Law standards, excessive absences, whether excused or unexcused, may result in penalties. **More than three absences may result in penalties to your final course grade, and you may fail the course if you miss more than twenty percent of our class time.** If you are unable to attend class, *you must advise me – in writing via E-mail* – well before class. If you must miss a class, please make an appointment with me catch up, and get any handouts that you may have missed. We will have one class online this semester, and this should give you more flexibility in your schedule, but when we have a class meeting, it is important that everyone attend. This is a fast-paced course, so falling behind does not work well. Fortunately, when it is over, it is over - there is no final examination.

### **Deadlines**

The course syllabus indicates the due dates for all assignments. Unless otherwise noted, all assignments are due **at the beginning** of class on the date indicated. Lawyers must meet deadlines imposed not only by courts but also by clients, partners in law firms, and supervising attorneys. Associates need to learn to handle several matters at one time and to manage time while researching and writing. Schedule research and writing to leave sufficient time both to prepare for and attend other classes and to proofread and revise your written product carefully. A need to complete an assignment for another class is not an

acceptable excuse for a lack of preparation in this class, nor should you use my assignments as an excuse for lack of preparation in other classes.

I can impose penalties for any assignment turned in after a deadline and I have discretion to determine whether a failure to submit any assignment on time is excused or unexcused and whether it will be penalized. I will grant extensions for any cause I deem reasonable (i.e., a cause a court would consider acceptable for an extension; please note most Colorado judges do not consider “press of other business” good cause), but such a request must be made in advance of the due date.

### **Collaboration**

**The Law School’s Honor Code applies to all work done for this course.** All students should be familiar with the provisions of that Code. There will be some assignments that involve collaborative work, but I will be clear about those. **To be clear, *all written work is to be solely your own product unless I provide an exception to this rule in the assignment.***

Giving or receiving assistance in proofing, editing, or writing assignments – except during in-class exercises – violates the Honor Code. You may not submit for credit any work or portion of that work that has been prepared or reviewed by any other person. Furthermore, using any materials that I have declared “off limits” violates the Honor Code. **If you have any questions about what constitutes collaboration or a violation of the Honor Code, please speak with me about it first.**

### **Case File**

I will provide each student with a file folder that will become your Case File. **For the entire semester, you should keep all completed assignments inside this Case File.** I will ask you to turn in most of your assignments with your case file. The assigned litigation document should be attached to the right side of the folder, and the assigned memo to me (see below) should be attached to the left side of the folder. Maintaining your file allows us both to see your progress over the course of the semester, and it is good practice for being a lawyer. All lawyers must be good at managing their case files (even if they delegate this to paralegals from time to time, it is still ultimately their responsibility). You may also want to keep a separate file with extra materials relating to the case and our course (such as this one).

This semester we will be filing all documents electronically through the LexisNexis File & Serve system that is in use in many state courts throughout the country, including several courts in Colorado. You will receive a UserID and PW for this system, and in addition to paper filing in your case file, we will electronically submit all papers to the “Judge” (in this case, your professor) and opposing counsel.

In addition to the litigation document you serve on opposing counsel, each of these documents must be accompanied by a memo to the professor (only) indicating your goals for the document, your thought process in preparing it, and a description of what you learned in preparing the document. In the case of some documents (such as interrogatories

and document requests – as well as the answers you prepare to these documents which you receive from opposing counsel) these memos need to specifically describe what your goals are for each interrogatory or document request (and your answers).

In addition to these documents, you will be using software called CaseMap (which, if you don't already have, you may download directly from LexisNexis) to keep track of Facts and Research for the problem we will work with during the semester. At the end of the semester, you will hand in your CaseMap file, which will be evaluated as part of your final grade. Here is the link to download CaseMap:

<http://www.lexisnexis.com/lawschool/content.aspx?articleid=125&topicid=32>

### **Class Participation and Involvement**

This class will be highly interactive. While in class, out of respect for your fellow students, please turn off your cell phones, pagers, and text messengers, and *do not use your laptop for non-class related purposes. Surfing the 'net during class is disruptive to the class, disrespectful to your teacher and classmates, and will not be allowed.*

You are responsible for all reading assignments. To acquire strong analytic and communication skills, your active participation in class and at conferences will be critical. We will conduct workshops in class, often in small groups, and participation is vital.

### **Grading**

The whole point of a "Practicum" class is to provide you with practical experience that you will be able to use in the practice of law. Accordingly, nearly all of our assignments are drafting actual litigation documents in a simulated litigation, and there are thirteen total written assignments. Consequently, there is no final exam for this course. Instead, your grade will be based on your class participation and on the various written assignments, as summarized below. Each student must successfully complete all assignments in order to pass the course. In addition, although I may not give separate evaluation sheets for all assignments, I will still evaluate them based upon quality and effort and they will all count toward your final grade for the semester. Scores earned for the various assignments accumulate throughout the semester, and I assign a final letter grade at the end of each semester. The weight for each category of assignments is as follows:

**Litigation Documents (and the accompanying memos) = 60% of the semester grade.**

**Deposition = 15% of the semester grade.**

**All other assignments, including class participation (including any online forums), the assigned class presentation, and your CaseMap file = 25 % of the semester grade.**