

Complex Litigation

LAW 6811, Section 1

Class: Thursday 5:30-7:30 pm

Text: Manual for Complex Litigation, Fourth (FJC: 2004)

Instructor: Jerome B. Abrams, Judge of District Court

Scott County, First Judicial District

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Office Hours: Upon Request

Course Requirements:

1. Attend Class
2. Participate in Class
3. Three written projects will be assigned. The first is to be individually prepared. The other two projects are collaborative yet will require individual input. The written projects all arise from the core hypothetical.
4. Each student will be assigned a 'client,' one of the parties in the core hypothetical. This client assignment will remain throughout the course. Unless you can comply with MN Rules Prof. Resp., Rules 1.6-1.10, the assignment will not change. These PR rules deal with confidences and conflicts of interest. Once you are assigned a 'client,' you will be unable to represent any other 'client.' You must also preserve the confidences and secrets of your 'client.'
5. Students may, and are permitted to confer with other students who represent the same 'client.' Each student must however do their own work in connection with each assignment.

6. Communication of you client's confidences, secrets, strategies, goals, etc. to a student who represents a different client is ipso facto a breach of your professional duty and a violation of course requirements.
7. There may be other assignments and reading different from or in addition to those assigned herein.
8. There is no formal final examination. There may be a final presentation scheduled at such time as the final exam would be administered.

Grading:

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| 1. Written assignments | 40-60% |
| 2. Preparation, participation, attendance, and demonstration of learned skills | 40-60% |

Each written assignment will be worth up to 20% per cent of the final grade. Item 2 is subjective in part, and objective concerning attendance. It is not enough to come to class. You should be prepared and also participate. The participation element is graded on knowledge acquired during the course from the lectures, readings, and completing the assignments.

The written assignments *require* individual participation. Even though there will be one document submitted to the Court for the second and third project, it will be obvious to the Judge (me) from the assignments if you do not effectively participate, and will adversely impact your grade.

Course Summary

The class will be presented in 3 roughly equal units. There will be some variability in the number of weeks devoted to each unit. The units present as follows:

1. Overview

- A. Introduction to the Diverse Realm of Complex Litigation

- B. Joinder/Aggregation of Cases and Claims
 - C. Role of Counsel in Complex Cases
 - D. Specific Types of Complex Cases
2. Pre-Trial Issues and Procedures
- A. Scheduling, Case Management and the Court
 - B. Motion Practice
 - C. Discovery
 - D. Expert Witnesses and Daubert Challenges
3. Trial and Settlement Practices
- A. Logistics and Administration
 - B. Representation Issues
 - C. Juries
 - D. Technology Needs for Complex Proofs
 - E. Masters and Referees
 - F. Alternative Dispute Resolution
 - G. Settlements

Each Unit will have a written assignment of increasing complexity. It is anticipated that the class will be divided into groups of 4 students, each representing one client—the same client—for the entire class.

Unit 1 focuses on recognizing complex cases and strategizing responses. The written assignment for Unit 1 will involve your recommendations to your individual client before any suit is filed. This will be a high level commentary on strategies that may be considered to optimize results. The bases of the recommendations may include procedural rules, statutes and case law we use as a part of the course. This paper will be mercifully brief. Particulars of the assignment will be provided.

Unit 2 is a practical immersion into the mechanics of pretrial activity involved with a complex case. There are several possible written assignments which may include one of the following: discovery plan, case management order, etc. The specific assignment will be given in class. It is permissible to speak with co counsel (i.e. a classmate that is representing the same client) about the assignment as it will be one document “submitted to the Court” on behalf of all parties in each group. As in the real world, co counsels representing the same client in similar litigation do discuss strategy among themselves, even though they may be involved in different cases.

The final portion of class, Unit 3 is to get students acquainted with resolution methods for complex cases. Trial will be discussed in detail as well as other methods of settlement.

Reading Assignments:

Unit 1 readings are as stated below. On line and in class supplementation will be provided for Units 2 & 3.

Unit 1 Readings

Before the first class, please read the following:

“Securing the Normative Foundations of Litigation Reform,” 86 BU L. Rev.1115 (2006). (10 pages)

Core Hypothetical

The pace of readings may vary and will be announced in class for the second week and weeks thereafter.

On aggregation and joinder read/review the following materials:

28 USC 1369; 28 USC 1404; 28 USC 1407; 28 USC 1441; 28 USC 1443; 28 USC 1446

MN. ST. 543.19

FRCP 18; FRCP 19; FRCP 20; FRCP 24; FRCP 42

In re Asbestos Prod. Liab. Litigation, 771 F. Supp 415 (No. VI) (Jud. Panel MDL 1991)

Taylor v. Sturgell, 128 S. CT. 2161 (2008)

Readings on the role of counsel in complex cases includes:

Manual for Complex Litigation (“Manual”) 4th Ed. Sec. 10.1- 10.34 (pp. 7-46)

Rules of Procedure for the Judicial Panel on MDL, Rules 1.1-25.5 (9 pages)

Specific case type readings include:

Multi Jurisdictional Cases, Manual Sec. 20.1-20.32 (pp.217-238)

Class Actions, FRCP Rule 23 and Manual Sec. 21.1-21.8 (pp.242-284); *In re Hydrogen Peroxide*, 552 F3d 305 (3d cir 2009)(re: antitrust)

Antitrust, Manual Sec. 30.1-30.4 (pp. 519-524)

Securities, Manual Sec. 31.1-31.5 (pp. 545-553)

Employment, Manual Sec. 32.1-32.3 (pp.561-572)

Mass Torts, Manual Sec. 22.1-22.318 (pp.341-362)

Manual Sec. 22.4-22.5 (pp. 376-378)

Manual Sec. 22.7-22.757 (pp.413-435)

N.B. READING MAY BE MODIFIED AS POSTED OR MENTIONED IN CLASS

Additional assignments for units 2 & 3:

Rule 16, FRCP

Rule 26 FRCP

Mancia v. Mayflower Textile Servs. Co 08-CV-00273 (DC MD 2008)2008 WL 4735344 (re: discovery obligations)

Manual Sections 11.1-11.67 and 22.6-22.635 (re: CMO's)

The Sedona Conference Cooperation Proclamation (re: discovery)

