

CHARLESTON SCHOOL OF LAW
SYLLABUS
DEPOSITIONS: EFFECTIVE STRATEGIES AND TECHNIQUES 6321

Fall 2021
Justin S. Kahn
office hours by Zoom appointment or phone

Monday and Wednesday
5:10 p.m. - 6:30 p.m.
M101

Required Textbook

The Deposition Handbook Revised Fifth Edition – published by Trial Guides

Students can register for the New Lawyer Program and receive 25% off The Deposition Handbook and other Trial Guides published books and video products.

Here is a link to the registration page:

https://www.trialguides.com/pages/new-lawyer-program?_pos=1&_sid=ae2f2878d&_ss=r

Online Resources:

South Carolina Rules of Court (civil and evidence)

<https://www.sccourts.org/courtReg/>

Federal Rules of Civil Procedure <https://www.law.cornell.edu/rules/frcp>

Federal Rules of Evidence <https://www.law.cornell.edu/rules/fre>

Grade, Class Credits, Attendance Policy:

This course is for 3 credits. The course will meet on Mondays and Wednesdays from 5:10 p.m. to 6:30 p.m., unless otherwise announced.

Due to the use of role play exercises (simulations) throughout the semester, which depend on students playing an assigned role (witness and/or opposing counsel), class attendance and thorough preparation are mandatory. If you are going to be absent or late for any reason, please notify me as soon as possible before class so that I may plan accordingly. In addition, due to the use of role plays throughout the course and the need to determine the members of the class as soon as possible. Lack of participation, unexcused absences and/or lateness will be noted and will result in a lower grade.

The course is graded based on the following: 1. class participation (50%), as described below; and 2. the Final Exam (50%).

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The components of class participation include: 1. your attendance; 2. your preparation for, and active participation in, class, including short in-class witness preparation and deposition exercises, longer in-class deposition role plays, a number of problem sets on witness preparation and deposition practice, post-role play debriefings, and feedback from professor and students; 3. written /or verbal self-critiques, as the taker and as a defender of the deposition; 4. Preparation for and argument of motion(s) concerning depositions; and 5. your Final Exam.

In addition, throughout the semester, you will be evaluated on your demonstration of an understanding of, and ability to perform, use effective deposition skills, including preparing a witness and yourself for a deposition as well as taking and defending a deposition. (Note: This course is not “blind graded.”)

As to any simulated motion hearing, deposition questioning, including cross-examination, and any written materials submitted such as deposition notices, cross-examination chapters or memos, you will be able to “re-submit” those after having an opportunity to be critiqued.

The Final Exam will be open book and test your knowledge of the rules of procedure, evidence and short answer responses to fact patterns.

Course Description and Objectives:

This is a course in understanding, planning and strategically taking depositions. The course objectives include having the students learn about the various rules (civil procedure, evidence and ethics) and strategies to be used in preparing for and taking depositions. Students will learn by doing. Students will participate and learn about phases of the deposition process - noticing a deposition, planning questions and goals for depositions, questioning witnesses, learning techniques to deal with evasive or non-responsive answers from the witness, handling obstructive opposing counsel and using transcripts in a discovery and dispositive motion.

Students will be expected to achieve the following outcomes: 1. knowledge and understanding of the rules and procedural law concerning depositions; 2. legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; 3. exercise of proper professional and ethical responsibilities to clients, opposing counsel and the legal system; 4. other professional skills needed for competent and ethical participation as a member of

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the legal profession; and 5. learning techniques that can be used not just in a deposition but at trial as well.

This course reviews the South Carolina Rules of Civil Procedure, Evidence, Ethics and comparable Federal Rules. Pre-requisites shall be successful completion of Civil Procedure I & II and LRAW I & II. It is preferred that one also successfully completed Evidence; however, one may take Evidence at the same time.

Access to the South Carolina Rules of Civil Procedure and Evidence are required and are available on line for free. The South Carolina Rules of Procedure Annotated and South Carolina Rules of Evidence Annotated published by the South Carolina Bar CLE Division may be helpful texts and the library should have those available.

Completion of the objectives will help make students marketable law clerks and associate attorneys. The class will prepare those who plan on solo practice upon graduation to have basic pretrial skills.

Classes involve lectures, discussions, student participation in the form of taking and defending a deposition and playing the role of a witness. There will be a review of applicable rules and in-class demonstrations designed to develop basic and advanced skills as well as motions practice. Competent advocacy requires good research, planning, strategy and organizational skills. Students are responsible for drafting the subject legal documents, outlining deposition questions both in and out of class.

(proposed outline of topics (subject to change) that generally follows the course book and reading a chapter a week, including working with some of the examples.)

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Part 1. The Basics

Weeks One and Two – Introduction to class; Discussion regarding course objectives; types of depositions; purposes and goals of a deposition; deposition conduct, including Rule 30 / *In Re Anonymous*; proper objections.

Task – Read assigned deposition and Answer 5 questions.

Part 2. Initial Planning and Preparation

Weeks Three and Four- Scheduling a Deposition; Who should attend? Where does everyone sit? Discussion of how determining goals; research; topics to cover based on witness, facts and elements needed to prove / defend your case; Discuss Subpoenas for deposition;

Tasks – Draft Notice of Deposition based on fact pattern; Read assigned deposition and Answer 5 questions.

Part 3. Planning and Practice

Weeks Five, Six, Seven, Eight and Nine – The Rule 30(b)(6) Deposition – purpose, topics, the Rule; Continue discussion of setting deposition goals; using discovery responses to prepare for depositions; Discussion of using documents during depositions, including authentication of documents for use at trial; Deposition behavior; Preparing deposition outlines; and practicing the taking of depositions based on assigned fact patterns;

Tasks – Read assigned depositions and Answer 5 questions. Draft Rule 30(b)(6) Deposition Notice based on assigned fact pattern; Draft deposition questions based on assigned fact patterns; take depositions based use your questions.

Part 4. Preparation, Techniques and Execution

Weeks Ten, Eleven and Twelve – Becoming the expert; Preparing for deposition through research of topics, relevant documents, and your deponent; Using depositions at trial; Continue discussion of deposition structure and outlining; Begin discussion of more advanced techniques.

Tasks - Read assigned depositions and Answer 5 questions; Draft deposition Prepare Motion for Summary Judgment based on affidavits and materials provided and affidavit in support and opposition to motion. Argue Motion to Compel.

Weeks Thirteen and Fourteen — Techniques in Action! Continue discussion of advanced techniques with real-life examples; Developing your own style; refining your questions to meet you goals; Exam review.

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Tasks – Read assigned depositions and Answer 5 questions; Draft deposition questions; Practice taking depositions.

There will be intermittent oral exercises related to practicing depositions. There will be a Final examination. Other interim assignments may be given. Participation in class and performance on writing assignments and examinations will be weighted in final grade.

ATTENDANCE POLICY: Absent, Tardy, Present but Unprepared, Exits Early Attendance is mandatory. Students are required to attend class on a regular and punctual basis and no student may miss more than fifteen percent (15%) of the class meetings and get credit for the course. For this course, which meets twice a week, this means that a student may miss no more than 4 classes or such other amount as the school policy requires. To get credit for attendance, you must sign the roster for every class. It is your responsibility to sign the roster and if you fail to sign it, you will be considered absent for that day. A student who is tardy, present but unprepared for class or who leaves class early may, at the discretion of the professor, be marked as absent. “*Tardy*” means more than 10 minutes late following the start time of class without an excuse approved by the Professor. “*Present but unprepared*” means that the student demonstrates that s/he has not reviewed the materials to prepare for class and is unable to meaningfully present or respond to questions about the material. “*Leaves class early*” means the student exits class more than 10 minutes before class ends. If a student exceeds this limit, the student shall not be permitted to take the exam. If you plan on being absent, late or need to leave class early for any reason, please let Professor Kahn know ahead of time.

BASIS OF GRADE:

Grade will be based on class participation, assignments, class discussion and the exam. There will be at least three opportunities for students to receive individualized feedback regarding legal skills from the professor related to making oral arguments, drafting of documents and cross-examination as demonstrated by the student in class. The student will have an opportunity to incorporate the feedback and be reassessed with additional feedback. Class participation and assignments will be half of the grade and the final exam will represent the other half. The examine will also test the student’s ability to apply legal skills to questions and fact patterns related to the South Carolina rules of evidence and procedure. Students may use a hard copy or online version of the South Carolina rules for the exam.

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Under Charleston School of Law policy, the amount of work for *each* credit hour of a course must be:

- At least 750 minutes of in-class time (12 ½ hours), which may include 50 minutes of final examination time; and,
- At least 1800 minutes (30 hours) of out-of-class student work.

This is a **3-credit hour** class, meaning that, in addition to attending classes each week, you should plan to spend a minimum of **6 hours per week** preparing for class.

ADA notice: Students with disabilities should contact the Associate Dean for Academic Affairs as soon as possible to request reasonable accommodations should those accommodations be desired.

****Assignments herein are tentative and may be altered by the Professor.** Assignments will be announced in class. Class attendance is mandatory as required by the school policy. Professor reserves the right to deviate from this Syllabus and not move forward until proficiency in each area is attained. Guest speakers and examinations may alter timetable in this Syllabus. Students with disabilities should contact the Associate Dean for Academic Affairs, Dean Margaret Lawton as soon as possible to request reasonable accommodations should those accommodations be desired.