

STRATEGIC CASE MANAGEMENT IN FLORIDA COURTS

Compressed Course Syllabus – Fall 2022

Course Information

Course Instructor:

Hon. Fabienne E. Fahnestock
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Office Hours:

I will be available to meet with students on Tuesday and Thursday from 12:00 p.m. to 1:00 p.m. Please email me to set up a meeting. Meetings will take place remotely by Zoom video. If you have any questions, feel free to send me a message by email.

Required Textbook and Materials:

None.

Recommended Textbook and Materials:

Trawick, Henry P., and Debra M. Salisbury, *Florida Practice and Procedure* (Thomson, 2020 Ed., 2019).¹

I may also recommend additional materials for your reference during class. Please note, however, that these additional materials may be referred to from time to time in class, but they are not necessary to successfully complete the course.

Course Description and Objectives:

This one credit course will help you become familiar with common problems with case management in Florida courts, and identify solutions to those problems.

Learning Objectives:

After completing this course, students should be able to:

1. Identify common problems in case management in civil litigation, including: motion practice, discovery, trials, and professionalism and civility.

¹ Any edition from of this textbook may be used for this class, but it is the student's responsibility to make sure that the chapters in their version correspond with the materials to be covered in class.

2. Identify and apply tools and techniques to solve these problems.

CANVAS:

Class information and announcements will be distributed by CANVAS at <http://elearning.ufl.edu>. You are responsible for checking for class announcements on a regular basis.

Course Schedule:

This is a compressed course. It encompasses 14 class hours over the course of five days. There will be three one-hour sessions each day Monday through Friday (sessions 1 through 4), as follows:

- 9:00 a.m. to 9:50 a.m.;
- 10:00 a.m. to 10:50 a.m.; and
- 11:00 a.m. to 11:50 a.m.

There will be two one-hour sessions on Friday (session 5), as follows:

- 10:00 a.m. to 10:50 a.m.; and
- 11:00 a.m. to 11:50 a.m.

The course is worth one credit hour.

A Zoom session will be established at least ten minutes before the first class on Monday and at least five minutes before the first class each day thereafter. You are expected to be logged into the Zoom meeting and ready to begin on time at the start of each session. You may be placed in a waiting room before being added to the Zoom session.

Course Schedule Detail:

Session 1, Part I: Introduction to Civil Litigation in Florida State Courts.

During this class, we will discuss the common life cycle of litigation in Florida State courts and identify the different stages where things can go very wrong, or very right. Over the course of this class, we will discuss how to juggle multiple cases or demands, organization, resources and the role of associates at small, midsize and large firms.

Session 1, Parts II and III: Pre-Suit Obstacles.

You will be introduced to the different obstacles that may arise before a complaint is filed. These include, without limitation, compliance with conditions precedent, notice requirements to suits, issues with service of process, choice of jurisdiction and venue. We will discuss possible options and solutions to tackle these pre-suit obstacles.

Session 2, Part I: Defensive Motions and Third Party Practice.

What do you do when the unexpected happens? What if third parties want to jump into your fight? How do you handle the flurry of motions that the defense file to dismiss your complaint? All of these expected and unexpected issues will be evaluated and discussed, as will the appropriate responses to each issue.

Session 2, Part II: Discovery, Depositions and E-Discovery Hurdles.

During this class, we will:

- identify the problems with the discovery rules;
- identify issues that commonly arise with expert witnesses and hostile witnesses;
- explore ways to handle obstructionist and aggressive discovery conduct;
- recognize ways to resolve discovery disputes; and
- examine the challenges associated with e-discovery.

Session 2, Part III: Pitfalls When Applying the Rules of Evidence.

There are many common mistakes made when applying the rules of evidence. During this class, we will identify those evidentiary mistakes when dealing with:

- hearsay rules;
- character evidence;
- remedial measures;
- admissibility and authenticity of social media, text messages and email;
- qualification of expert witnesses; and
- potential pitfalls with expert and scientific evidence.

Session 3, Part I: Common Problems in Motion Practice.

During this class, we will discuss the importance of crafting compelling motions and responses. We will explore the common errors made in summary judgment motions and motions in limine, and identify other potential mistakes common in motion practice. We will also address the necessity of proper preparation for hearings, and the potential mistakes that can result from a failure to prepare.

Session 3, Part II: Settlement Challenges.

We will examine some of the key impediments to settlement, as well as steps you can take to facilitate settlement. We will discuss common issues such as:

- dealing with difficult opposing counsel;
- selecting the right neutral to help mediate issues;

- dealing with an impasse;
- potential pitfalls when drafting the settlement agreement; and
- other typical problems that arise in mediation and arbitration.

Session 3, Part III: Troubles You May Encounter At Trials.

Many things can go wrong at trial. From trial preparation to jury selection, witness and evidence dilemmas to handling the flurry of objections, we will identify some of the expected “unexpected” events, and ways to prepare for them.

Session 4, Parts I, II and III: Post-Trial Practice and Appellate Mishaps.

Just because a verdict has been rendered does not mean the heavy lifting is over. Some of the most critical motions that can be filed are the post-trial motions. We will discuss some of the most common post-trial motions that should be considered, and potential pitfalls that may arise post-trial and during the appeal process.

Session 5, Parts I and II: Legal Ethics Quandaries.

There are many ethical quandaries that arise throughout the course of litigation. During our final sessions, we will explore some of these, including:

- conflicts of interests;
- disqualification of judges;
- dealing with problematic clients; and
- dealing with problematic opposing counsel.

Assignments:

At the end of each day, you will be given a fact pattern or case study to evaluate and prepare a short paper (3-5 pages) addressing the issues raised in the fact pattern and analyzing the proposed solutions for each issue. These papers will be due the following morning, at the start of the next Session. These written assignments account for 25% of your final grade.

At the conclusion of Session 4, you will be given a take home exam. The exam must be turned in by 11:59 p.m. on Friday, January 28, 2022. This exam accounts for 50% of your final grade.

Class Preparation:

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. You are expected to prepare carefully for each class. Although there are no required readings, we will have classroom exercises, which all students are expected to participate in. In addition, at the end of each class, you will be given a writing assignment. The writing assignment should reflect the effort you have made to prepare for class, and include references and citations to case law, rules of procedure, and statutes, if applicable. The written materials will be graded, as will the

classroom exercises. I expect that you will spend at least two hours out of class reading, preparing written materials, and preparing for in-class exercises for every one hour in class.

Written assignments should be submitted in Word or PDF format through CANVAS. I will provide comments on the assignments and assign a grade promptly. I expect to return the assignments through CANVAS.

Attendance:

Attendance is mandatory, and will be taken at the beginning of each class. Because the class is largely participatory, and a portion of your grade will be based on in-class participation, it is essential that you attend every class. Missing two or more classes without prior notice to the instructor will result in a referral to Student Affairs. Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with University policies that can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

Participation:

The participation grade is determined by attendance, preparation for class, participation in class, and overall effort to complete the assignments. Class members will be expected to offer constructive observations of other class participants' performance during the mock exercise.

Grading:

The components of the final grade for the course are listed below:

Final exam: 50%

Written assignments 25%

Class preparation and participation: 25%

During the class, students will receive grades for the written assignments, class performance, and class participation that will be computed into the final grade for the course. Per law school policy, this class will be graded on a curve. Information on current College of Law grading policies for assigning grade points can be found at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current%20students/academic-policies>.

University of Florida Policies

University Policy on Accommodating Students with Disabilities:

Students requesting accommodations for a disability should register first with the Office of the Dean of Students (<https://www.dso.ufl.edu/drc/>). The office of the Dean of Students will provide documentation to the student who then must provide this documentation to the instructor when requesting an accommodation. You must submit this documentation prior to submitting assignments or taking quizzes or exams. Because accommodations are not retroactive, students should contact the Office of the Dean of Students as soon as possible in the semester for which they are seeking an accommodation.

University Policy on Academic Misconduct:

UF students are bound by the Honor Pledge, which states:

We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: “On my honor, I have neither given nor received unauthorized aid in doing this assignment.”

The Honor Code (<https://sccr.dso.ufl.edu/students/student-conduct-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor.

University Policy on Course Evaluation:

Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations typically are open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at: <https://evaluations.ufl.edu/results/>.

Getting Help:

For technical difficulties with E-learning in CANVAS, please contact the UF Help Desk at:

helpdesk@ufl.edu
(352)392-HELP

<http://elearning.ufl.edu/> (See “Message Us” at the top)

Other resources are available at <http://www.distance.ufl.edu/getting-help> for counseling and wellness, disability resources, student complaints, and library help desk support.

Disclaimer:

This syllabus represents my current plan and objectives. As we go through this course, the plan may need to change to enhance the class learning opportunity. Such changes, communicated clearly, are not unusual and should be expected.