

# TAKING AND DEFENDING DEPOSITIONS

## COURSE SYLLABUS SUMMER 2021

INSTRUCTORS: Willie Ben Daw III  
Email: [wbdaw@dawray.com](mailto:wbdaw@dawray.com)

Email:

Email:

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PROFESSOR DAW OFFICE PHONE: (713) 266-3121  
PROFESSOR DAW CELL PHONE: (713) 824-0151 (use this one)  
CLASS HOURS: Monday, Tuesday 6:00 p.m. - 8:20 p.m.

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### A. DESCRIPTION

*Taking and Defending Depositions* is a two credit-hour course that focuses exclusively on the methods, techniques, and usage of depositions in the civil litigation setting. This class will focus on preparing for and taking depositions in State Courts of Texas and will also cover depositions in Federal Court.

### B. REQUIRED READINGS

- Malone, David, and Hoffman, Peter (2012) *The Effective Deposition: Techniques and Strategies that Work*, ***Fourth Edition***;
- *Dixon v. Providential Life Insurance* Case File, ***Seventh Edition***;
- Texas Rules of Civil Procedure (through the Texas Supreme Court's website); and
- Selected Course Handouts.

### C. COMMUNICATION

Because this class is taught exclusively by adjuncts, there are no office hours for this course. Students are encouraged to ask questions about the nature of the course and course expectations in the classroom or by email. As attorneys, the adjunct professors' capabilities of answering phone calls, especially during business hours, is extremely limited. Accordingly, email is strongly encouraged as the primary method of out of class communication with adjuncts.

## **D. STRUCTURE OF THE COURSE**

All classes will be a combination of on campus and “remote learning” classes. The first day of class will be on campus. The remaining on campus and remote classes will be identified during the first class. For remote classes, you will be sent a Zoom link with log in instructions for lectures. The format will remain the same as on campus classes.

The class will be composed of nine (9) lectures and seven (7) “break-out” sessions in which each student will be expected to practice the skills discussed during the previous lectures. Students are encouraged to ask questions during lecture sessions. The first class period will be comprised solely of a lecture and discussion. Each class thereafter will begin with a break-out session followed by a lecture, with the exception of class number 6, which will consist of a Mid-term instead of a break-out session. Students are required to attend each lecture (via Zoom) and participate in each break-out session (via Zoom).

Prior to each class period, each student is expected to complete the assigned reading and prepare for each break-out session. Each student will be evaluated/graded during each break-out session, and the performance of each student will contribute to their respective final grades.

Students will also be expected to attend one deposition and prepare a paper describing the process, the techniques utilized by the deposing counsel, the actions of the defending attorney, and any other observation that is relevant to the experience. The deposition should be either a complete deposition or the first two hours of a deposition. Students will be provided a list of depositions that are available to attend or they can make their own arrangements. The attended deposition and observation must occur while the class is ongoing. It cannot be something the student observed prior to the first day of class.

All three professors are attending Zoom deposition on a regular basis. If you do not know someone who can allow you to observe a deposition via Zoom, you can attend one being conducted by one of the professors or an attorney at our firms.

## **E. GRADING**

Your grade will be determined by adding up your scores in 5 separate categories; with those totals being applied to a predetermined curve required by the law school. The 5 categories represent 4 “tasks” and one overall professionalism grade. Below is a detailed description of the tasks to be performed.

Break-out Sessions - Students will participate in taking simulated depositions using the specifically assigned portions of the *Dixon v. Providential Life Insurance* case file, or other specific and provided assignments. Each break-out session will consist of a small group of students which will remain constant throughout the class. Each student will be given a letter designation as either an “A” or “B.” The deponent for each session is determined by the student’s letter designation. For each exercise, one student will act as the attorney taking the deposition and one student will be acting as opposing counsel. Witnesses will be provided. Students will be expected to have complete understandings of the problem/case file which is the

subject of the break-out session. Students will be graded on their performance in each session. A student's participation in the break-out sessions will also be a consideration in the professionalism portion of the final grade. Students are expected to prepare approximately 10 minutes of questioning for each break-out session. The break out session grades will comprise 35% of the final grade.

Mid-term – The Mid-term exam will comprise 20% of the final grade.

Professionalism – Each student will be expected to act in a professional manner, which involves zealous advocacy in conjunction with giving the witness, opposing counsel, court reporter and videographer the courtesy and respect that is appropriate. Also, the level of preparedness of each student for each class will impact the professionalism grade. Professionalism will make up 10% of the final grade. (Every student starts with full credit for professionalism.)

Deposition Observation paper – Each student is required to attend one deposition and write a three page paper describing the process, the techniques utilized by the deposing counsel, the actions of the defending attorney, and any other observation that is relevant to the experience. Students who are unable to attend a live deposition have the option of watching video depositions which will be provided by faculty upon request. The deposition observation paper will comprise 5% of the final grade.

Final – Each student will have 30 minutes to take a deposition of an assigned witness and will have to defend a deposition conducted by their “opposing” counsel. The final exam will comprise 30% of the final grade. The final examination will take place over two days, which will be the final class day and the day provided for the final. On day one of the final, the student will either take or defend a deposition. On day two, the students will switch roles.

## **F. ATTENDANCE**

Participation in break-out sessions is the primary tool in this course for developing deposition techniques. Accordingly, attendance will be closely monitored. Absences may be (and will be freely) excused with good cause, which would include but is not limited to legitimate familial, medical, or work related complications. It is imperative that the student communicate the necessity of being absent before the class. Failure to notify the adjuncts prior to class, even if excused, **will** have a significant effect on the professionalism portion of the grade. Un-excused absences will not be tolerated; students with un-excused absences will receive a score of 0 for the break-out session which they missed as a result of the un-excused absence AND a 50% reduction in the professionalism portion of the grade.

## G. COURSE OUTLINE AND SCHEDULE

CLASS	TOPIC	READING ASSIGNMENTS
1	<p>Monday, June 6</p> <p>Lecture 1: Goals and Purpose of the Course Background and Mechanics of Depositions Beginning the Deposition Introduction to Funneling</p>	<p>Chapters 1, 2, 3, 4, 6</p> <p>pp. 4-64, 91-116</p>
2	<p>Tuesday, June 7</p> <p><b>Break-out- Beginning a Deposition</b> <b>A - Sheriff Altair Khouri</b> <b>B - Norman F. Crowe</b></p> <p>Lecture 2: Funneling and other Deposition Techniques Style and Organization of a Deposition Preparing for a Deposition</p>	<p>Chapters 5, 7, 8</p> <p>pp. 65-90, 117-195</p>
3	<p>Monday, June 13</p> <p><b>Break-out- Obtaining Information Using Funneling</b> <b>A - Sheriff Altair Khouri</b> <b>B - Norman F. Crowe</b></p> <p>Lecture 3: The Usage of Exhibits at Deposition Foundations as Applied to Depositions</p>	<p>Chapters 9, 10</p> <p>pp. 197-260</p>

4	<p>Tuesday, June 14</p> <p><b>Break-out- Laying the Foundation and Usage of Exhibits in deposition</b>  <b>A - Sheriff Altair Khouri</b>  <b>B - Norman F. Crowe</b></p> <p>Lecture 4:  Defending a Deposition  Texas Rules of Civil Procedure and Depositions  Federal Rules of Civil Procedure and Depositions  Objections During a Deposition  Reviewing and Supplementing the Deposition Transcript</p>	<p>Chapters 14, 15</p> <p>pp. 327-371</p>
5	<p>Monday, June 20</p> <p><b>Break-out- Defending a Deposition</b>  <b>A - Sheriff Altair Khouri</b>  <b>B - Norman F. Crowe</b></p> <p>Lecture 5:  Deposing a Corporate Representative</p>	<p>Chapter 19</p> <p>pp. 429-444</p>
6	<p>Tuesday, June 21</p> <p><b><u>MID-TERM</u></b></p> <p>Lecture 6:  Handling Obstructive Opposing Counsel  Deposition Follies and Pitfalls</p>	<p>None</p>
7	<p>Monday, June 27</p> <p><b>Break-out- Deposition of Corporate Representatives</b>  <b>A and B - Cross-Examination of Robert/a Wilson</b></p> <p>Lecture 7:  Deposing an Expert Witness</p>	<p>Chapter 20</p> <p>pp. 447-489</p>

8	<p>Tuesday, June 28</p> <p><b>Break-out- Deposition of Expert Witnesses A and B - Cross-Examination of Allister/Allison E. Upchurch, MD</b></p> <p>Lecture 8: Preparing the Witness Use of Depositions at Trial Concluding the Deposition</p>	<p>Chapter 11, 13, 16, 18, 21</p> <p>pp. 261-280, 296- 326, 375-399, 407-428, 489-498</p>
9	<p>Tuesday, July 6</p> <p><b>Break-out- Preparing the Witness A- Mary Dixon B- Robert/a Wilson</b></p> <p>Lecture: 9 Final Review Class Overview</p>	None
10	<p>Wednesday, July 6 Thursday, July 7</p> <p><b><u>FINAL EXAMINATION</u></b></p>	None