

Litigation Ethics and Professionalism Seminar
Class Outline and Reading Assignments

Note: Class meets once a week for two hours. By the beginning of the semester, the students shall have completed reading *A Civil Action*, by Jonathan Harr. Throughout the semester, we will be discussing excerpts from a series of videotapes, "Lessons from Woburn," that was produced about the Anderson v. Cryovac case by the Seattle University School of Law.

Class One: Introduction to the Regulation of Lawyer Behavior in Litigation

Coverage:

In this class, we review the many different sources of authority for regulating the lawyer's conduct in litigation. These include Rules of Civil Procedure, Rules of Professional Conduct, statutes such as 28 U.S.C. 1927, the contempt power, civility codes, and the inherent power of the court.

Reading:

Federal Rules of Civil Procedure 11,16, 26-37
Model Rules of Professional Conduct 1.2, 1.7-1.12, 3.1-3.7, 4.2-4.4, 8.4
28 U.S.C. 1927
18 U.S.C. 401
ABA Guidelines for Litigation Conduct
Chambers v. NASCO

Class Two: The Lawyer as Gatekeeper: Rule 11 and Related Doctrines

Coverage:

In this class, we will discuss limits on the lawyer's ability to bring a case. We will discuss in particular the initiation of the Anderson v. Cryovac case and the Rule 11 motion that was filed in response.

Reading:

Federal Rule of Civil Procedure 11
Model Rule of Professional Conduct 3.1
Documentary Companion to *A Civil Action*, pps. 63-80, 113-146

Class Three: Class Actions, Joinder and Conflicts of Interest

Coverage:

In this class, we will discuss a series of hypotheticals involving how the Anderson case might have been brought. In particular, we will discuss special issues that would have arisen if the case had been brought as a class action and potential conflicts of interest that might have arisen for the firms representing the various defendants.

Reading:

Federal Rules of Civil Procedure 20 and 23
Model Rules of Professional Conduct 1.7-1.12
Documentary Companion to A Civil Action, pps. 155-187

Class Four: Investigations

Coverage:

In this class, we will discuss limits on a lawyer's tactics in conducting informal investigations in civil cases. We will focus particularly on Model Rules of Professional Conduct 4.2 and 4.3 as they relate to contacts between the plaintiff's firm in Anderson and Al Love, as well as other tactics alleged to have been used by the plaintiffs in their investigation.

Reading:

Model Rules of Professional Conduct 4.2-4.3
Documentary Companion to A Civil Action, pps. 190-195

Class Five: Document Production

Coverage:

In this class, we will discuss a variety of issues that arise in connection with document production. These issues include overly broad requests, artificially narrow interpretations of what has been requested, failure to produce documents, and sanctions. A particular focus of this discussion will be the so-called "Yankee Report" that was not produced in the Anderson case.

Reading:

Federal Rules of Civil Procedure 34, 37
ABA Guidelines for Litigation Conduct (“Lawyer’s Duties to Other Counsel”)
Documentary Companion to A Civil Action, pps. 415-487
ABA Civil Discovery Standards 17-24

Class Six: Depositions, Part One

Coverage:

In this first of two classes on depositions, we will focus on questions of ethics and professionalism that arise from the side of the questioning party. In particular, we will discuss scheduling, the scope of questioning, the manner of questioning, dealing with objections, and dealing with refusals to answer.

Reading:

A. Darby Dickerson, The Law and Ethics of Civil Depositions
A. Darby Dickerson, Deposition Dilemmas: Vexatious Scheduling and Errata Sheets
Federal Rules of Civil Procedure 26, 30, 37
Model Rules of Professional Conduct 3.2-3.5, 4.4
ABA Guidelines for Litigation Conduct (“Lawyer’s Duties to Other Counsel”)
Documentary Companion to A Civil Action, pps. 289-300
ABA Civil Discovery Standards 25-34

Class Seven: Depositions, Part Two

Coverage:

In this second of two classes on depositions, we focus on questions of ethics and professionalism that arise on the side of the defending party. In particular, we will discuss objections, conferences with the witness, instructions not to answer, and interaction with opposing counsel.

Reading:

A. Darby Dickerson, The Law and Ethics of Civil Depositions
A. Darby Dickerson, Deposition Dilemmas: Vexatious Scheduling and Errata Sheets
Federal Rules of Civil Procedure 26, 30, 37
Model Rules of Professional Conduct 3.2-3.5, 4.4
ABA Guidelines for Litigation Conduct (“Lawyer’s Duties to Other Counsel”)

Documentary Companion to A Civil Action, pps. 289-300
ABA Civil Discovery Standards 25-34

Class Eight: Expert Witnesses

Coverage:

In this class, we will discuss a series of issues that arise when parties use expert witnesses. In particular, we will discuss choosing an expert, preparing an expert, and interaction with an opponent's expert. These discussions will be prompted by the use of a videotape, Ethics and Expert Witnesses, produced by the Mercer Center for Legal Ethics and Professionalism.

Reading:

Patrick E. Longan, Ethics and Expert Witnesses (manual)
ABA Civil Discovery Standards 35-43
Federal Rule of Civil Procedure 26(a)(2), 26(b)(4)
Model Rules of Professional Conduct 3.3-3.4

Class Nine: Settlement Negotiations

Coverage:

In this class, we will deal with issues that arise in settlement negotiations. In particular, we will focus on issues of truthfulness, fairness, threats, and conditions (including secrecy). We will also discuss special issues that arise in mediation and other types of assisted settlement. The discussion will cover the various phases of settlement negotiations in the Anderson case.

Reading:

Documentary Companion to A Civil Action, pps. 391-414, 543-556
Patrick E. Longan, Ethics and Settlement Negotiations
ABA Litigation Section Ethical Guidelines for Settlement Negotiations
Patrick E. Longan, Bureaucratic Justice Meets ADR: Magistrates as Mediators
Model Rule of Professional Conduct 4.1, 8.4

Class Ten: Jury Selection

Coverage:

In this class, we will discuss the issues of ethics and professionalism that arise in jury selection. We will discuss investigations of jurors, ex parte contacts with jurors, courtroom interaction with jurors, and discrimination in jury selection. We will also use this occasion to talk about ethics and professionalism in dealing with the media. We will do so in the context of a hypothetical jury pool in the Anderson case.

Reading:

Edmonson v. Leesville Concrete

Documentary Companion to A Civil Action, pps. 585-609

Model Rules of Professional Conduct 3.5-3.6

Class Eleven: Trial

Coverage:

In this class, we will discuss issues of ethics and professionalism that arise in trial. In particular, we will discuss witness preparation, direct examinations, cross examinations, interaction with opposing counsel, objections, interactions with the judge, opening statements, and closing arguments. We will conduct this discussion in the context of the trial in Anderson. We will be using in particular the passages in A Civil Action that described the trial.

Reading:

Model Rules of Professional Conduct 3.3-3.5

Re-read A Civil Action, 293-376

Class Twelve: Post-trial Matters and Conclusion

Coverage:

In this class, we will discuss post-trial matters and conclude the seminar. Post-trial matters include post-trial motions and contacts with jurors. We will use the occasion of post-trial motions to discuss motion practice generally, including the duty of candor to the court. We will close by listening to the interviews with the plaintiffs in the Anderson case about how they felt the civil justice system treated them and their claims.

Reading:

A Documentary Companion to A Civil Action pps. 651-690

Model Rules of Professional Conduct 3.3, 3.5