

# Review

Trial Advocacy  
Fall 2009

I. Special Dates

A. **Written Assignments**

*First*, Monday, August 24, 2009

*Second*, Tuesday, August 25, 2009

*Third*, Monday, August 31, 2009

*Fourth*, Thursday, September 3, 2009

(Special written assignment to Ms. Herrington)

B. **University Holiday**

C. **First Meeting with the Judges**

**Tuesday, September 8, 2009**

D. **Final date to submit name of Partner**

**September 23, 2009**

E. **Lottery!**

*Monday, September 28, 2009*

## II. Structure of Course

### A. **Three (3) Parts**

<b>NO</b>	1. <i>Written Assignments</i>	-	<b>10%</b>
Special dress for class	2. <i>Five (5) Exercises</i> (September 8-October 13)	-	<b>40%</b>
<b>Dress-up</b> for Pretrial and Big Trial	3. <i>Big Trial</i>	-	<b>50%</b>

### B. Required Materials

1. **Mauet's Trial Techniques**
2. **Rowe v. Pacific Quad, Inc.**
3. **Syllabus**
4. **Federal Rules of Evidence**
5. **Rules of Professional Conduct**
6. **Supreme Court decisions interpreting the Constitution**

### C. Five (5) Exercises

1. **Pretrial Conference**
2. **Opening Statement**
3. **Direct-X**
4. **Cross-X**
5. **Closing Argument**

1. **Pretrial**

(a) **Before the Pretrial**

- **Theory of Case**
- **Stipulation**
- **Notice of Motion**
- **Exhibits List**
- **Witness List**

(b) **At the Pretrial**

- Introduction of **self, client & side of the case;**
- Setting the Agenda-  
(Judge's preference)
- Motion/Argument
- Stipulations
- Exhibit List
- Witness List
- **Rule 615** - "*The Rule*"
- Supporting **case law, Rules**
- Making a Record - **Rule 103**
- Mechanics of the trial  
(lectern, exhibits, expert testimony)
- **Appendix B** - page 29

(c) After the Pretrial

- Ending the session
- Drafting the order
- Editing the order
- Materials/papers left with the court

2. **Opening Statement**

- (a) Introduce - self, client, theory
- (b) Use of lectern
- (c) Tell a story (use an Exhibit)
- (d) Identify that **theory**  
(This case is about \_\_\_\_\_?)
- (e) The **key** players-**key** testimony  
(What should the Jury be looking for?)
- (f) Even so, (2d above) Don't tell  
the Jury everything
- (g) Don't promise **too much!**
- (h) Is there a weakness-that will come out in the case?  
(*"Removing the sting"*-similar to Rule 607)
- (i) At the conclusion of the **opening**-  
Why you are confident that the Jury  
will return a verdict for your side)

3. Direct Examination

- (a) **Rules 611(a), (b) & (c)**
- (b) **Who** is this witness?
  - background - (age/employment, relationship to parties, etc.)
- (c) **What** does he know?
- (d) **How** did he come to know it?

**Segue to the Action**  
of this testimony

- (e) **No *leading*** questions

**But**

See **Rule 611(c)**

**Rule 611(a)**

**Rule 612** **and**

**Rule 803(5)**

**Rule 607**

- (f) **Dramatizing** or Emphasizing the key part of the witness testimony
- (g) Using an exhibit
- (h) Concluding the examination

4. Cross-X

(a) **Rule 611(b)** - Scope of ?

(b) **Rule 613**

(c) **Rule 608(b)**

**and**

(d) **Rule 609**

(e) **Bias**

(f) **Rule 612**

The “*Rule of Completeness*”

(g) Forcing the witness to answer the question!

**Attacking  
credibility  
or  
bolstering?**

5. Closing Argument

(a) Key jury instruction!

(b) Exhibit(s)?

(c) Promises made by either side

(d) Evidence presented that **supports**  
or **undermines** credibility of key  
witnesses

(f) Rebuttal

(g) Magic moments during the trial.