Introduction to Practice

Litigation and Arbitration

Duke University School of Law
Career & Professional Development Center
October 21, 2010
Assess Yourself

Strengths | Weaknesses
Why Do You Do Your Best Work?
Can You Juggle?

[Image of a man juggling knives outdoors with a crowd watching]
Your View of the World?
Litigator
Trial Lawyer
Appellate Lawyer
Litigation: Substantive Areas of Law
The Litigation Lifecycle

- Civil litigation can be divided into **seven stages**:
  - Investigation
  - Pleadings
  - Discovery
  - Pre-trial
  - Trial
  - Settlement
  - Appeal
Initial Case Investigation

- In the plaintiff’s case, if enough evidence exists to file a lawsuit or, in the defendant’s case, what evidence exists to defend a potential suit.

- The investigation process may include locating witnesses, taking statements, gathering documents, interviewing the client and investigating the facts leading to the dispute.
Pleadings

- Plaintiff attorneys will draft a summons and complaint to commence the lawsuit. Defense attorneys collaborate with the client to formulate responses. Litigator attorneys also draft a variety of motions including motions to strike, dismiss, amend or change venue, and motions for judgment on the pleadings.
Discovery

- The exchange of relevant information between the parties.
- These devices include interrogatories, requests for production, requests for admission, and depositions. May also examine physical evidence and collect, process and analyze information gathered during e-discovery.
- Litigators also draft and argue discovery-related motions including motions to compel, protective orders and summary judgment motions.
Pre-Trial

- Litigators consult with and advise clients; retain expert witnesses; attend pre-trial conferences and develop a trial strategy based on the facts and evidence.

- Also conduct pre-trial depositions of experts and key witnesses; prepare demonstrative exhibits to be used at trial; and draft and argue pre-trial motions.
Trial

- At trial, litigators conduct voir dire, select a jury and present their case in court; present opening and closing statements, examine and cross-examine witnesses and craft a persuasive story for the fact-finder through testimony and evidence.

- Litigators also prepare jury instructions and conduct post-trial interviews of the jury.
Settlement

- At settlement, litigators engage in negotiations with opposing parties; participate in mediations and settlement conferences with the parties and the judge; and create settlement brochures, agreements, releases and other materials.
Appeal

- Litigators draft post-trial motions; identify and preserve issues for appeal; develop appellate strategies; gather evidence for the appellate record; research procedural issues; draft appellate documents; and present oral arguments before appellate courts.
Where is the work?
Core Skills Needed
Courses to Consider

Class Schedules

Fall 2008 | Spring 2009 | Summer 2009 | Fall 2009 | Spring 2010

Blackboard course sites are “Unavailable” until released by the instructor. Please also check Blackboard for newly released sites.

Click on the column title to sort

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Beyond The Classroom
What is Arbitration?

A voluntary, binding, non-judicial method of resolving disputes

Key features:
1. Adversarial
2. Private
3. Mutually-Agreed Upon (generally)
Arbitration Advantages

Speed
Cost
Confidentiality
Finality (minimum review)
Paths to Arbitration: Arbitrability Clauses

Some examples:

- Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration in accordance with the Federal Arbitration Act.

- All disputes arising out of or in connection with the present agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in connection with the said rules.

Important: In the US, the Federal Arbitration Act ("FAA"), 9 U.S.C. Sec. 1 et seq. applies to all arbitrations concerning transactions "involving commerce" (i.e. interstate commerce or foreign commerce). Laws of individual states will also apply unless preempted by the FAA.
Arbitrability Clauses May Include...

- Place of Arbitration
- Applicable Rules of Procedure and Evidence (i.e. JAMS, IBA, AAA, etc.)
- Discovery Rights
- Fees and Cost Awards
- Composition and number of arbitrators
What skills are necessary for arbitration?

Blend of negotiation and advocacy skills

1. Must work with the other side
2. Assist Arbitrator with logistics
3. Fact-finding and discovery are often streamlined
4. No showmanship – more akin to appellate advocacy
5. Flexibility and creativity
Opportunities to Learn about Arbitration

1. **Classes at Duke:** Arbitration Law and Practice (Prof. Holton), International Arbitration (Prof. Kent)

2. **Internships with Arbitration Organizations:** Permanent Court of Arbitration, Office of International Trade and Investment Disputes, US Council for International Business, etc.

3. **Moot Competitions:** Willem C. Vis International Commercial Arbitration Moot Competition, North American round of the ELSA World Trade Organization Moot Court Competition
Close Your Eyes - Imagine
Resources

- “Law Firm Practice Area Summary”, handout by Major, Lindsey & Africa