COURSE OBJECTIVES AND PROCEDURES:

Course Description and Objectives: By the end of the semester, you will know 1) the policies and purposes of civil discovery, 2) procedural and ethical duties in discovery, 3) practical application and assessment of discovery devices and responses and 4) the need to think and use judgment in conducting civil discovery.

Meeting Times and Place: Monday and Wednesday, 10:45 to noon, in Room 175. Due to my moot court travel, we may need to meet for a few makeup classes – time and place to be determined.

Texts: Andrews Hand-out Book [“HB”] (on sale in bookstore). You also will need to regularly use (in and outside of class) the FRCP governing Discovery. You can buy any 2016 FRCP rulebook or access these rules on line. Make sure these are current editions: the discovery FRCP were amended in December 2015. We also will study a few of the Federal Rules of Evidence.

Assignments: The Syllabus is not divided by day. Some units will take a few class periods, and others will take only minutes in class. I usually will end each class with an instruction of which units to read for the next class.

Attendance Policy: You must attend and sign the roster every day, including any make-up classes. You may not sign the roster if you are more than 10 minutes late. If you miss the roster, you may not sign the roll on another day, unless you have my permission. If you miss more than six classes you will be withdrawn from the course.

Final Examination and Grading: Your grade will be based on your performance on the final exam, which will be an in-class 3-hour exam at the place and time scheduled by the Records Office. The exam will include both essay and multiple-choice questions.

Office Hours, Email Updates and Conferences: I will be in my office daily, usually from about 8:30 am until 4:30 pm. I welcome your visits. I invite you to go to lunch or walk with me. I regularly will communicate with the class through class-wide emails to announce class changes or syllabus clarifications and to distribute addition handouts and problem sets.

Seating and Special Accommodations: I will use the overhead projector and/or the whiteboard most days of class. Please sit in the middle, where you can see both. I will not require you to sign a seating chart. If you need other accommodations for visual or other disability, please let me know.

Computer Use, Dress, Cell Phones and Recordings In Class. This is a professional class, so act accordingly. Do not wear hats. Show courtesy to me and your classmates and turn off your cell phones. Do not use your computers in a disruptive manner. Please talk to me first if you want to record the class for any reason.

Patience with My Mistakes. I have found that in recent years, I increasingly mis-speak: I am particularly prone to using the wrong name or noun. I realize that this can be confusing and frustrating in a class built on rule minutia. Be patient. You usually can tell the correct term from the context. I often will have the rule on the screen, and if you are still confused, ask me to clarify.
COURSE READINGS AND STUDY MATERIALS

I. Introduction -- Historical Evolution and Overview of Methods and Basic Rules

Andrews’ Thinking Essay, Parts A and B (HB, 288)

Compare/scan FRCP 26 & ARCP 26 [Alabama Rule of Civil Pro] (HB, 15)

II. General Concepts and Duties

A. The Basic Scope of Discovery – Introduction
FRCP 26(b)(1) [scan recent amendments – HB, 239-40]
Andrews’ Intro, Part II(A) (HB, 236)
Chief Justice John Roberts, 2015 Year-End Report (HB, 61)

B. Scope – Relevance
FRCP 26(b)(1)
FRE 401 [review FRE 403 & 407]
Andrews’ Intro, Part II(B) (HB, 236-40)
Hall case, Parts A & B (HB, 116)
Henry case, Parts A & C (HB, 126)
Mesa case (HB, 179)
Café Asia case (HB, 215)
United Oil case (HB, 218)

C. Scope – Proportional
FRCP 26(b)(1)
Advisory Committee Notes, 2015 Amendments to FRCP 26(b) (HB, 241)
Andrews’ Intro, Part II(C) (HB, 238-40)
Bard case (HB, 75)

D. Other “Reasonableness” Limitations on Discovery
FRCP 26(b)(2) [scan FRCP 26(b)(2)(B)]
Andrews’ Intro, Part II(D) (HB, 243)
Hall case, Parts A, B & E (HB, 116)
Dorsey case, Parts A, D and G (HB, 87)

E. Confidentiality and Related Concerns
FRCP 26(c) [review FRCP 5.2]
Andrews’ Intro, Part II(E) (HB, 243)
Hibu case, Parts I & III(C) (HB, 121)
Frankl case (HB, 103)
F. “Privilege” and “Work Product”

1. Introduction and Overview
   Andrews’ Intro, Part II(F)(1) & II(F)(2) (HB, 245)

2. Privilege
   a. Attorney-client privilege
      ARE [Alabama Rule of Evidence] 502 and ac notes (HB, 5-10)
      UpJohn case, Parts I & II (HB, 223)
      Lynch case (HB, 158)
      Westinghouse case (HB, 201)
   b. Other privileges

3. Work Product Protection
   a. History and Basic Definition
      FRCP 26(b)(3)
      Andrews’ Intro, Part II (F)(3) (HB, 246)
      Hickman case (HB, 131)
   b. Application of work product protection
      AIA Holdings case (HB, 66)
      UpJohn case, Part III (HB, 223)
      Dunkin Donuts case, Part II(A) (HB, 93)
      Mir I case, Parts A and B(I) (HB, 181)
   c. Witness Statements
      Norfolk Southern case (HB, 197)

4. Waiver of privilege or work product protection
   FRCP 16; FRCP 26(b)(5)(B)
   ARCP 26(b)(6)(B) (HB, 15)
   ARE 510 (HB, 11)
   FRE 502
   Andrews’ Thinking Essay, Part H (HB, 295-96)
   Lynch case (HB, 158)
   Hall case, Parts C and D (HB, 116)
   Mir I case, Parts B(2) & B(3) (HB, 181)

5. Privilege/Work Product Logs
   FRCP 26(b)(5)(A)
   St Paul case, Part I & II(A)(2) (HB, 205)
   Middle District Alabama, Discovery Guideline I(J) (HB, 42)
   Middle District Alabama, Sample Privilege Log (HB, 53)

6. Work Product and Privilege Problem Set (HB, 247)
G. General (Procedural) Duties in Discovery

1. Cooperation
   FRCP 26(f); FRCP 37(f); FRCP 16
   Andrews’ Intro, Part II(G)(1) (HB, 248)
   Middle District Guidelines, Appendix II (HB, 54-55) (“Right Questions”)
   Andrews’ 2010 CLE, Parts B(1) and B(2) (HB, 266-68)
   Andrews’ Thinking Essay, Part C (HB, 290)

2. Good Faith and Reasonable Inquiry
   FRCP 26(g)
   Andrews’ Intro, Part II(G)(2) (HB, 248)
   St Paul case, Parts I & II(B) (HB, 205)

3. Supplementation
   FRCP 26(e) and 37(c)(1)
   ARCP 26(e) (HB, 18)
   Andrews’ Intro, Part II(G)(3) (HB, 248)
   Andrews’ 2010 CLE, Parts B(3) (HB, 271)
   Andrews’ Thinking Essay, Part F (HB, 294)

H. Ethical Duties in Discovery

1. Preservation/non-destruction/correction of evidence
   FRCP 37(e)
   MRPC 3.3 & 3.4(a) & (b) (HB, 23-24)
   Alabama Code re Tampering with Evidence (HB, 4)
   Andrews’ Intro, Part II(H)(1) (HB, 249)
   Café Asia case (HB, 215)
   Living Color case, Parts I and II(B)(1) (HB, 148)

2. The Client “Lie” in Civil Discovery
   ABA Opinion, 93-376 (HB, 29)
   Andrews’ Intro, Part II(H)(2) (HB, 249)

3. Receipt of privileged/protected information
   FRCP 16 and 26(b)(5)
   MRPC 4.4(b) (HB, 27)
   Andrews’ Intro, Part II(H)(3) (HB, 249)

4. Informal Fact Gathering and Witness Contacts
   MRPC 3.4(f), 4.1, 4.2, 4.3, 4.4(a) (HB, 24-27)
   Andrews’ Intro, Part II(H) and CLE (HB, 250)
   Gaylard case (HB, 109)
5. Multi-state Discovery  
   Andrews’ Intro, Part II(H)(5) (HB, 64)

6. Representation of corporate employees  
   MRPC 1.7, 1.13(a)(f)&(g), 4.2 & 7.3 (HB, 21+)

7. Special Competency Duties and Issues in E-Discovery  
   California Ethics Opinion (HB, 33)

I. Timing of Discovery: Star/Close of Discovery Period and Individual Time Limits  
   FRCP 6; FRCP 26(d); FRCP 26(f); FRCP 27; FRCP 29; FRCP 16  
   Andrews’ Intro, (HB, 264)  
   In re Bridge Collapse case (HB, 79)  
   Mantiowac case (HB, 173)  
   Middle District Alabama, Discovery Guideline I(E) thru I(I) (HB, 41-42)  
   Middle District Alabama, Discovery Guideline, App. II (“Right Questions”) (HB, 54)

J. Non-party Discovery - General Overview  
   FRCP 45 (HB, 29)  
   Guy Chemical case (HB, 113)  
   AIG case (HB, 191)  
   Brown case (HB, 84)

K. Informal fact-gathering  
   Henry case, Parts A & B (HB, 126)

L. International Discovery [Review only]  
   Auction Houses case, Parts A & C (HB, 71)

M. Form, Service, Filing and Public Access to Discovery Materials  
   FRCP 5; FRCP 26(c)  
   Frankl case (HB, 103)

N. Appellate Review of Discovery Orders  
   Norfolk Southern case, Part II (HB, 197)  
   Hickman case (HB, 131)  
   Dorsey case Part B (HB, 87)
III. Interrogatories

A. Introduction
   FRCP 33
   Andrews’ 2010 CLE, Part C(3) (HB, 275)

B. Preparing and Serving Interrogatories
   FRCP 33 [Compare automatic disclosure provision of FRCP 26(a)(1)(A)]
   Andrews’ 2010 CLE, Parts B(3) & B(4) (HB, 269-70)
   Andrews’ 2010 CLE Sample Interrogatories (HB, 278-83)
   Andrews’ Thinking Essay, Parts D, E and F (HB, 291)
   Krawczyk case, Parts I & II(A) (HB, 140)
   Middle District Alabama, Discovery Guideline IV(A) thru IV(D) (HB, 50-51)

C. Responding to Interrogatories
   FRCP 33(b); FRCP 26(e)&(g); FRCP 29
   Andrews’ 2010 CLE, Parts B(5) (HB, 270)
   Auction Houses case, Part B (HB, 71)
   St Paul case, Part II(A)(1) (HB, 205)
   Dorsey case, Parts A, D, E and H (HB, 87)
   Krawczyk Part II(B) (HB, 140)
   Hibu case Part III(B) (HB, 121)

D. The Rule 33(d) (“Look It Up Yourself”) Option
   FRCP 33(d)
   Middle District Alabama, Discovery Guideline IV(E) (HB, 51)

E. Contention Interrogatories
   FRCP 26(b)(3); FRCP 33(a)(1) & (2)
   Dorsey case, Parts E and F (HB, 87)
   Krawczyk, Part II(B)(2) (HB, 140)
   Hibu, Part III(A) (HB, 121)

F. Trial Use of Interrogatories
   FRCP 33(c)

G. Class Critique of District Maryland “Standard” Interrogatories (HB, 56)
IV. Document Requests and Property Inspections

A. Introduction
   FRCP 34
   Andrews 2010 CLE, Part C(1) (HB, 273-74)

B. Preparing and Serving Document Requests
   FRCP 34; [Compare disclosure in FRCP 26(a)(1)(B)]
   Andrews’ 2010 CLE, Part (C)(1) (HB 273-74)
   St Paul case, Parts I & II(A)(3) (HB, 205)
   Mir II case (HB, 186)

C. Responding to Document Requests
   FRCP 34(b); FRCP 26(b)(5); FRCP 26(e) & (g)
   Hall case, Parts C & D (HB, 116)
   St Paul case, Parts II(A)(1) and II(A)(3) (HB, 205)
   AIG case (HB, 191)
   Middle District Alabama, Discovery Guideline III(C) (HB, 46)

D. Non-Party Requests and Responses
   FRCP 34; FRCP 45(a), (b), (c)(2) and (d)
   Brown case (HB, 84)
   Guy Chemical case (HB, 113)

E. Discovery of Electronically Stored Information (“ESI”)
   FRCP 26(b)(2)(B); FRCP 34(a)(1)(A)&(C), 34(b)(2)(D), 34(b)(2)(E)(ii)&(iii),
   FRCP 37(e), FRCP 45(e) and ARCP 34 (HB, 16)
   Guy Chemical case (HB, 113)
   Café Asia case (HB, 215)
   Living Color case (HB, 148)
   California Ethics Opinion (HB, 33)
   Middle District Alabama, Discovery Guideline III(D) (HB, 48)

F. Social Network Discovery
   EEOC case (HB, 97)
   Federal Stored Communication Act (18 USC 2701) (HB, 3)
V. Depositions

A. Introduction
   Andrews’ 2010 CLE, Part C(2) (HB, 274-75)
   Middle District Alabama, Discovery Guideline II (HB, 43-45)

B. Initiating Depositions – Timing, Notices and Subpoenas
   FRCP 30(a), 30(b)(1)-(4), 30(g); FRCP 32(a)(5)(A); FRCP 37(d)(1)(A)(i)
   FRCP 45(a), 45(b), 45(c)(1) & 45(d)
   *Review:* FRCP 27(a) and (c)(1)(B)
   Middle District Alabama Guideline II(A) (HB, 43)

C. Use of Depositions and Selection of Persons to Depose
   FRCP 30(a) and 30(b)(1); FRCP 32(a); FRCP 45(c)(1)

D. Entity Depositions
   FRCP 30(b)(6); FRCP 37(a)(3)(B)(ii) and 37(d)(1)(A)(i)
   *Dunkin Donuts* case, Part II (HB, 93)
   *AIG* case (HB, 191)
   *King* case (HB, 138)
   *Reed* case (HB 202)

E. Methods of Taking and Forms of Depositions
   1. Stenographic, video and phone depositions
      *Review:* Middle District Alabama Guideline II(F) & II(G) (HB, 45)
      FRCP 28(a) and 29(a)
   2. Depositions on Written Questions: FRCP 31 [*Review only - not on exam*]

F. Conduct of Depositions: Duration, Examinations and Objections, Motions to Terminate
   FRCP 30(c), 30(d); FRCP 32(b)&(d)
   *Dunkin Donuts* case, Part III (HB, 93)
   FRE 103
   Middle District Alabama Guideline II(D)-(G) (HB, 44)

F. Other People Attending Depositions
   FRE 615 and FRCP 26(c)
   Middle District Alabama Guideline II(B) (HB, 43)

G. Investigation and Preparation for Depositions and Talking to Witnesses
   FRCP 26(g); MRPC 3.4(b)

H. Review/Changes to Depositions
   FRCP 26(e), FRCP 30(e) & (f)
   MRPC 3.3

I. The “Usual Stipulations” - Critique Middle District Alabama Guideline II(C) (HB, 44)
VI. Mental and Physical Exams
FRCP 35(a)

VII. Requests to Admit
FRCP 36; FRCP 37(c)(2)
Joseph case (HB, 145)
Middle District Alabama, Discovery Guideline V (HB, 52)

VIII. Automatic Disclosures
FRCP 26(a)(1), FRCP 26(a)(3); FRCP 26(e); FRCP 26(g); FRCP 37(c)(1)
GFS Discussion 43 (GFS, 332)
Andrews’ Thinking Essay, Part E (HB, 293)
Lomascolo case (HB, 153)
Hibu case (HB, 121)

IX. Discovery Motions, Sanctions and Protective Orders

A. Introduction
FRCP 26(b)(2); FRCP 37
Andrews CLE Part B(7) & B(8) (HB, 272)

B. Motion to Compel Discovery (or For Protection from Discovery)
FRCP 37(a); FRCP 26(c); FRCP 45 (d) & (e)
Dunkin Donuts case, Part II (HB, 93)
Mesa case (HB, 179)
Dorsey case, Part A (HB, 87)

C. Sanctions for Non-compliance with Court Order
FRCP 37(b); FRCP 45(g)
Malautea case (HB, 97)

D. Other Discovery Sanctions and Motions
FRCP 37(c) & (d); FRCP 26(g); FRCP 30(g)
Lomascolo case (HB, 153)
St Paul case (HB, 204)
Stallworth case (HB, 212)

E. ESI Sanctions
FRCP 37(e)
Living Color case (HB, 148)

X. Experts (Introduction Only)
FRCP 26(a)(2); FRCP 23(b)(4)
ARCP 26
FRE 702, FRE 703 & FRE 705

XI. Exam Review - Sample Andrews’ exam questions (HB, 298)