CIVIL PROCEDURE

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Spring 2026
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Section A:
3-4:10 p.m. Wednesday-Thursday
1-2:10 p.m. Friday
RDB 2008

Section B:
11 a.m.-12:10 p.m. Wednesday-Friday
RDB 2008

Office Hours: Monday & Tuesday, 11-Noon, 2-3:30 p.m.
Wednesday, Friday, 9:30-10:30 a.m.
Friday, 1-3 p.m.
Whenever I am in my office
Email questions to me
Schedule a meeting at your convenience

***Course Outline*:**

This course provides students with an introduction to the judicial process and to the procedure governing civil litigation, using federal courts and the Federal Rules of Civil Procedure as an illustration. The course combines doctrinal, policy, and theoretical components, so students consider not only how the system functions, but why it functions in that manner and whether other procedural systems would be preferable or more effective.

The course focuses on pre-trial and post-trial procedures, including pleading, discovery, summary judgment, judicial case management, and motion practice. The course also introduces students to the concepts of personal and subject-matter jurisdiction, choice of law, and the effects of final judgments.

***Learning Outcomes*:**

- By the end of this course, students will be able to recognize and analyze the steps in the pretrial litigation process and to follow a case from its origins through trial.
- By the end of this course, students will be able to draft and make arguments analyzing litigation documents and resolving pre-trial motions.
- By the end of this course, students will be able to engage in basic statutory interpretation.

***Required Materials*:**

1) LINDA S. MULLENIX, LEADING CASES IN CIVIL PROCEDURE (West 4th ed. 2022)
2) JOSEPH GLANNON, THE GLANNON GUIDE TO CIVIL PROCEDURE (Wolters-Kluwer 5th ed. 2023)
3) FEDERAL RULES OF CIVIL PROCEDURE (2025 ed.) (Compiled by Kevin M. Clermont)
Note: Yes, you must use the most recent version of the rules
4) ***Pleadings*** (packet available outside my office) (documents also available on ***Blog***)
5) ***Civil Procedure Blog***: http://fiucivpro.blogspot.com (indicated in syllabus), especially ***Supplemental Materials.***

Technology and Class Conduct

Use of laptops, tablets, book readers, smart phones, and similar devices during class is prohibited, unless you have received permission or accommodation in advance.

Phones must be turned off when class begins.

Class attendance is required.

You must be in class on time unless I have previously given you permission to come late. You may not enter the room once class has begun unless I have given you permission to come late. Once class has begun, do not leave unless necessary and please limit movement in and out of the room; I reserve the right to change this policy mid-semester. Exceptions to these policies for medical or similar reasons will be made for documented accommodations.

You must have your Federal Rules of Evidence pamphlet and any assigned materials with you and open on your desk at every class.

For those of you who prefer having (or being able to obtain) more precise notes, classes will be audio-recorded and the audio file for each class session will be posted on the ***Blog***. You are welcome and encouraged to review the recording and Blog your notes. This is, in fact, comparable to what you will experience in practice. You will go through a day of trial or deposition working with your own brief notes and your participation in events, then receive a transcript a day or two later.

Your attendance and participation in this course constitutes consent to such recordings, which will only be used for educational purposes by students in the course and securely stored in University systems. If there is a concern regarding the recording and use of such recording, please contact FERPA@fiu.edu.

Plagiarism Policy

Do not.

AI Policy

Do not.

The use of ChatGPT and other generative AI, LLM, or similar programs for written assignments is prohibited and will be deemed a violation of College of Law academic policies.

Grading:

Your grade will consist of five components. Details can be found on **Assessments**, to be downloaded from the ***Blog***.

Essay: 50 points

Preliminary Examination: 50(ish) points

Final Examination: 100-120 points

Class Participation: 30 points

Optional Creative Project: 10 points. This is ***entirely optional*** and designed to be ***fun***.

Civil Procedure Blog

The course blog is ***Wasserman's Civil Procedure Blog***: http://fiucivpro.blogspot.com. Posts can be read going down from most recent to least recent.

We will use the blog for posting:

- Syllabus, assignment information, and all additional assigned readings.

- Supplemental Materials beside the casebook, Glannon, Rules Pamphlet, and Pleadings packet. I recommend bookmarking this post for easy access during the semester.

- Audio recording of each class meeting.

- A short after-class post containing a summary and some additional points about the just-completed session, as well as assignments, materials, questions, and issues you should think about for the next class.

- Ongoing conversations with ***short*** posts about the law of Civil Procedure, the class discussions, reaction papers, and, most importantly, real-world stories touching on this material (I promise there will be a lot of them). I occasionally will post questions to the blog and encourage written responses for the blog.

All of this is by way of saying that you should get in the habit of checking the blog *at least* once or twice during the day.

Because you do not have access to write for the blog, email posts, stories, etc. to me and I will put them on the site.

College of Law Academic Policies

This class is administered and conducted in accordance with all the provisions of the Florida International University College of Law Academic Policies, *reprinted in* the College of Law Student Handbook. Students are expected to be familiar with and to conduct themselves in line with those policies.

Class Assignments

Thoughts on Civil Procedure:

The focus of this class is a code—the Federal Rules of Civil Procedure, along with provisions of the United States Constitution and the United States Code governing jurisdiction and procedure in the federal courts. The goal of the course is to understand what individual rules and statutes require, how rules and statutes relate to one another and to the body as a whole, and how rules and statutes apply to particular litigation situations reflected in judicial opinions. The class also will provide a basic introduction to rules of statutory interpretation.

Working through the issues in this course requires you understand how different rules and principles fit together. You must be ready, in class, to discuss the plain textual language of a rule or statute, as well as its underlying history, policy, and purpose. You also must be ready to jump around to different provisions to find applicable rules. Your rules pamphlet should become tabbed, dog-eared, and well-marked to allow you to locate key provisions easily and quickly. You also must see how cases interpreting and applying rules and statutes fit and affect our understanding of the rules.

Because much of the discussion focuses on the various rules, you should never enter this classroom without the Rules pamphlet, as well as any additional assigned rules or statutes; it must be open and in front of you at all times. Many of the answers to the issues we will discuss in class are contained in the text. When we discuss a rule or statute, everyone should be reading along.

This course builds on itself. It is important that you grasp the rules, statutes, and material that we discuss early in the semester in order to grasp the material that we discuss later in the semester. Many early-semester concepts are embedded in stuff we do later in the semester. Do not simply forget or disregard what we do in the beginning of the semester, because that information will come up again and again throughout the class. You cannot understand much of what we do later in the course unless you understand and recall what we did earlier in the course.

Locating Assignments:

We will be working with several materials from different sources and places. This is unavoidable. Please bring all assigned materials to class on the appropriate day.

Unless otherwise indicated, assigned cases are in LEADING CASES IN CIVIL PROCEDURE; commentary, detail, elaboration, explanation, and examples are in GLANNON'S GUIDE ("*Glannon*"). Rules, Statutes (28 U.S.C.), constitutional provisions, and legislative history can be found in FEDERAL RULES OF CIVIL PROCEDURE, unless indicated otherwise:

- Part 2: Federal Rules of Civil Procedure (without committee notes)
- Part 3: Advisory Committee Notes from past amendments to FRCP
- Part 5: Selected provisions of the United States Constitution and procedural statutes from 28 U.S.C.
- Part 7: Sample Local Rules of Civil Procedure

Additional assigned cases, articles, statutes, rules, and other materials will posted and available on the ***Blog*** (**Supplemental Materials** post).

Book and page numbers are in parentheses after each assigned case in MULLENIX. Provisions are found in the relevant Part of the FRCP book. Items listed as ***Blog*** are in the ***Supplemental Materials*** post.

Pleadings are in a bound packet, which you must get from outside my office prior to the first class. You must have your FRCP pamphlet with you and open on your desk in every class. You must have any assigned statutes, provisions, pleadings, documents, an cases with you and open on your desk in every class.

Discussion Questions has been posted to the ***Blog***. This contains a series of questions for each topic; these questions will guide class discussions and should help you in synthesizing material. You should be prepared to discuss these in class. I may post additional questions to the blog ahead of a class session.

Puzzles has been posted to the ***Blog***. This contains a series of puzzles that we will work through in class, again divided by topic. You must prepare these ahead of time. I may post additional puzzles to the blog ahead of a class session.

Preparing for Class:

Your starting point on any assignment must be the language and history of the applicable rule or statutory provision listed in the assignment; you then should proceed to the explication, elaboration, and application of the rules in a given case and in any assigned history. Whenever a case discusses a rule or statute, be sure to cross-reference the language and history of that rule or statute, and understand how the rule is being read, interpreted, and applied by the court. In reading cases, pay attention to the procedural posture of the case, as that (rather than substantive outcomes) will be our primary focus.

Class discussions will focus on how all the materials—the relevant rule or statute, the case, the commentary and examples, and the documents—fit together. Do not simply read and brief or take notes on individual rules, statutes, cases, and articles. Rather, after reading each individual piece, spend time thinking about how the readings relate to one another—what are the common themes and principles, how do the cases complement or conflict with one another (and can any conflicts be reconciled?), how has a case interpreted and applied the plain language and history of a rule or statute? Generally, our discussions will not proceed case-by-case, but instead will focus on overarching themes. Preparing for class means thinking about the connections among the themes in the material.

You must read and familiarize yourself with the text of all assigned rules, as well as the Advisory Committee Notes, which provide necessary background and detail about meaning and application. When a rule is assigned, you should read the text of the rule first, then read the Advisory Committee Notes, then go back and read the rule again. "Reading" a rule means understanding the rule; by the time you come to class, you should be able to paraphrase the rule in plain English and discuss and explain what it says and means and how it will apply. Again, you must have your rules pamphlet with you for every class and it should be tabbed and marked-up.

The **Pleadings** show how court documents are organized and structured. Become familiar with the basics of each case, as we will be referencing their facts and posture as case studies throughout the semester—treat them as cases you are litigating and clients you are representing. These samples illustrate how the rules operate and what they require; they also will provide good factual hypotheticals that we will cover throughout the semester.

GLANNON is, by far, the best Blog on the market. It helps synthesize and understand the materials from the rules and cases. It provides brief exposition on the law, followed by "worked problems," multiple-choice questions with detailed explanations of why each choice is correct or incorrect. We will work with some of the problems from the book in class. If you do the hard work of carefully reading the assigned primary materials (rules, statutes, and cases), aided by *Glannon*'s, you will be prepared for class and for learning and understanding this material. I strongly encourage you to not look for or use other study guides or Blogs; you are better served putting in extra time with the assigned materials than with looking for extra stuff to read.

Introduction to Civil Procedure:

Provisions:
U.S. Const. art. III
U.S. Const. amend. V, VII, XIV
Fed. R. Civ. P. 1, 58, 60, 83
28 U.S.C. §§ 1331-1332
28 U.S.C. § 1257
28 U.S.C. §§ 1291, 1254
28 U.S.C. §§ 2071-2074

Case Excerpt:
Shady Grove Orthopedic Assocs. v. Allstate Ins. Co. (*Leading Cases* pp. 683-84 (Part II.B, first 2 ¶s))

Sample Pleadings:
Naruto v. Slater (Complaint) (***Pleadings***)
Godin v. School Union # 134 (***Pleadings***)
Morgan v. Wal-Mart (***Pleadings***)
Visions of America v. Boston Symphony Orchestra (***Pleadings***)

Other Materials:
United States Courts (Chart & Map) (***Blog***)
Federal Courts in Florida (***Blog***)
Courts of Florida (Chart & Map) (***Blog***)
Barton, *Great Judicial Stylists* (***Blog***) (skim)
2025 Year-End Report on the Federal Judiciary (***Blog***) (filing statistics in Appendix)

Pleading

Introductory Note on Pleading

The first section of the course, ***Pleading***, consists of seven (7) somewhat discreet sub-sections that all fall together as the process governing the earliest portion of a civil action. Our approach will be to examine each area individually and in detail, then tie them together at the end of this section. While it will appear that we are spending a lot of time looking at "trees" without discussing the "forest," I ask you to be patient; I promise everything will fall into place at the end.

In the meantime, it is important that you absorb the material for each sub-part and that you be able to bring it bear as we discuss later sub-parts.

Introduction to Pleading

Provisions:
U.S. Const. amend. VII
Fed. R. Civ. P. 2, 3, 8(a), 8(d), 8(e), 10, 11(a), 11(b), 11(c), 41(a)

Sample Pleadings:
Naruto v. Slater (Complaint) (***Pleadings***)
Godin v. School Union # 134 (***Pleadings***)
Morgan v. Wal-Mart (***Pleadings***)
Visions of America v. Boston Symphony Orchestra (***Pleadings***)

Cases:
Trump v. New York Times (***Blog***)

Commentary:
Glannon 323-37

Joinder of Claims and Parties

Provisions:
Fed. R. Civ. P. 7(b), 8(a), 8(d), 8(e), 18(a), 19, 20, 21, 24(a), 42(a)
U. S. Const. art. IV § 1
28 U.S.C. § 1738

Case Excerpt:
Jones v. Ford Motor Credit (*Leading Cases* p. 452-55)

Commentary:
Glannon 233-37, 286-90
Glannon 463-82 (Claim Preclusion)
Glannon 483-504 (Issue Preclusion)

Sample Pleadings:
Naruto v. Slater (Complaint) (***Pleadings***)
Godin v. School Union # 134 (***Pleadings***)
Morgan v. Wal-Mart (***Pleadings***)
Visions of America v. Boston Symphony Orchestra (***Pleadings***)

Responding to a Pleading: *Motions*

Provisions:
Fed. R. Civ. P. 4(a), 4(b), 4(c), 4(e), 4(f), 4(h), 4(m)
Fed. R. Civ. P. 5, 7, 8(a), 8(c), 10(a), 12(a), 12(b), 12(c), 12(d), 12(e), 15(a), 16, 41(b)
28 U.S.C. § 1331-1332

Cases:
PAE Govt Servs. v. MPRI, Inc. (*Leading Cases* 389-92)
Trump v. New York Times Co. (***Blog***)
Jane Doe No. 2 v. Clinton County (***Blog***)

Commentary:
Glannon 339-54, 401-17
Waiver Puzzles (posted on ***Blog***)

Sample Pleadings:
Naruto v. Slater (Complaint and Motion) (***Pleadings***)

How Much Detail: *The Idea of Notice Pleading*

Provisions:
Fed. R. Civ. P. 2, 8(a), 10, 11(b), 12(b), 12(e), 41(a), 55

Cases:
Conley v. Gibson (*Leading Cases* 353-56)
Trump v. New York Times (***Blog***)

Commentary:
Glannon 277-81

An Alternative: *Fact or Heightened Pleading*

Provisions:
Fed. R. Civ. P. 9(b)
15 U.S.C. § 78u-4(b) (PSLRA) (***Blog***)

Cases:
Swierkiewicz v. Sorema, N.A. (***Blog***)

The Present and Future of Federal Pleading

Provisions:
Fed R. Civ. P. 8(a), 11(b), 12(d)

Cases:
Bell Atlantic Co. v. Twombly (*Leading Cases* 356-72)
Ashcroft v. Iqbal (*Leading Cases* 372-87)
Johnson v. City of Shelby (***Blog***)

Commentary:
Glannon 282-86

Sample Pleadings:
Naruto v. Slater (Complaint) (***Pleadings***)
Godin v. School Union # 134 (***Pleadings***)
Morgan v. Wal-Mart (***Pleadings***)
VOA v. BSO (***Pleadings***)

Responding to a Pleading: *Responsive Pleadings*

Failure-of-Proof Defenses:

Provisions:
Fed. R. Civ. P. 4(a), 4(b), 4(c), 4(e), 4(f), 4(h), 4(m),
Fed. R. Civ. P. 5, 7, 8(b), 11(b), 12(a), 12(b), 12(c), 12(f)

Cases:
Zielinski v. Philadelphia Piers, Inc. (*Leading Cases* 405-10)
King Vision Pay Per View, Ltd. v. Dimitri's Restaurant, Inc. (***Blog***)

Commentary:
Glannon 290-99

Sample Pleadings:
Kinsmann v. Winston (Answer) (***Blog***)

Affirmative Defenses:

Provisions:
Fed. R. Civ. P. 8(c), (12(c), 12(f)

Sample Pleadings:
Kinsmann v. Winston (Answer) (***Blog***)

Additional Claims:

Provisions:
Fed. R. Civ. P. 8(c), 12(c), 12(f), 13(a), 13(b), 13(g), 14, 18, 41, 55

Cases:
Jones v. Ford Motor Credit Co. (Introduction, Background, and Part I only) (*Leading Cases* 452-55)

Commentary:
Glannon 237-51

Sample Pleadings:
Kinsmann v. Winston (Answer) (***Blog***)

Amending Pleadings and Relation Back

Provisions:
Fed. R. Civ. P. 15
Advisory Committee Notes to 1966 Amendments
Advisory Committee Notes to 1991 Amendments
Advisory Committee Notes to 2009 Amendments
Fed. R. Civ. P. 4(m)

Cases:
Zielinski [Review] (*Leading Cases* 405-10)
Foman v. Davis (***Blog***)
Krupski v. Costa Cruise Lines, NV, LLC (*Leading Cases* 412-22)
Herrera v. Cleveland (***Blog***)

Commentary:
Glannon 301-21

Managerial Judging

Provisions:
Fed. R. Civ. P. 16
Advisory Committee Notes to 1983 Amendments
Advisory Committee Notes to 1993 Amendments

Commentary: *Review*:
2015 Year-End Report on the Federal Judiciary (***Blog***)
2016 Year-End Report on the Federal Judiciary (***Blog***)

Other Materials:
NFL v. NFLPA (***Blog***)
McCullers v. Koch Foods (***Blog***)

Discovery:

Discovery Process:

Provisions:
Fed. R.Civ. P. 1, 16, 26(a)(1)-(2), (b)(1)-(3), (c), (d), (e), (f); 30(a)-(d); 33; 34; 35; 36
(Skim Fed. R. Civ. P. 31, 32)
Advisory Committee Notes to 1993 Amendments to Rule 26
Advisory Committee Notes to 2000 Amendments to Rule 26
Advisory Committee Notes to 2015 Amendments to Rule 26
Fed. R. Civ. P. 45

Cases:
Schlagenhauf v. Holder (*Leading Cases* 510-20)

Commentary:
Glannon, 355-99
2015 Year-End Report on the Federal Judiciary (***Blog***)
2016 Year-End Report on the Federal Judiciary (***Blog***)

Enforcing and Avoiding Discovery Obligations

Provisions:
Fed. R. Civ. P. 16; 26(a)(1)-(2), (b)(1)-(3), (c), (d), (e), (f); 37; 45

Cases:
Seattle Times Co. v. Rhinehart (*Leading Cases* 526-34)

Materials:
2015 Year-End Report on the Federal Judiciary (***Blog***)

Discovery Review

Coca Cola Bottling v. Coca-Cola (***Blog***)

Summary Judgment

Provisions:
U.S. CONST. amend. VII
Fed. R. Civ. P. 50, 56
Advisory Committee Notes to 2010 Amendments to Fed. R. Civ. P. 56

Cases:
Adickes v. S.H. Kress (***Blog***) (Majority: Intro & Part I; Black concurrence)
Celotex Corp. v. Catrett (*Leading Cases* 582-92)
Nunes v. Lizza (***Blog***) (Part II, pp. *25-27)
Scott v. Harris (*Leading Cases* 592-601) (watch video, on ***Blog***)

Commentary:
Glannon 406-22

Review
Salazar-Limon v. City of Houston (***Blog***)

Subject Matter Jurisdiction

Overview

Provisions:
U.S. CONST. art. III, § 2
28 U.S.C. §§ 1251, 1331, 1332(a); 1338; 1291; 1254; 1257
Fed. R. Civ. P. 12(b)(1), 12(h)(3)

Sample Pleadings:
Naruto v. Slater (Complaint) (***Pleadings***)
Godin v. School Union # 134 (***Pleadings***)
Morgan v. Wal-Mart (***Pleadings***)

Diversity Jurisdiction

Provisions:
Fed. R. Civ. P. 12(b)(1), 12(b)(7), 19, 21
28 U.S.C. §§ 1332(a), (c), (e); 1359; 1369

Cases:
Mas v. Perry (*Leading Cases* 190-93)
The Hertz Corp. v. Friend (*Leading Cases* 194-203)

Commentary:
Glannon 3-24

Sample Pleadings:
Morgan v. Wal-Mart (***Pleadings***)
VOA v. BSO (***Pleadings***)

Federal Question Jurisdiction (Summary on ***Blog***)

Provisions:
U.S. CONST. art. III § 2
28 U.S.C §§ 1331, 1337, 1338, 1343(a)(3)
15 U.S.C. § 78aa (***Blog***)
15 U.S.C. § 1121 (***Blog***)

Commentary:
Glannon 25-30

Supplemental Jurisdiction

Provisions:
28 U.S.C. § 1367
Fed. R. Civ. P. 8(a), 13, 14, 19, 20, 23, 82

Cases:
Jones v. Ford Motor Credit Co. (Full Case) (*Leading Cases* 452-68)

Commentary:
Glannon 253-75

Sample Pleadings
Godin v. School Union # 134 (***Pleadings***)
VOA v. BSO (***Pleadings***)
Kinsmann v. Winston (Answer) (***Pleadings***)

Removal

Provisions:
28 U.S.C. §§ 1441, 1446, 1447

Commentary:
Glannon 53-70

Sample Pleadings
Notice of Removal, *Kinsmann v. Winston* (***Pleadings***)
Notice of Removal, *Malandrucco v. Chicago Tribune* (***Pleadings***)

Personal Jurisdiction

Introduction and History

Provisions:
U.S. CONST. art. IV § 1
U.S. Const. amend. V, XIV
28 U.S.C. § 1738
Fed. R. Civ. P. 12(b)(2), 12(h)

Cases:
Pennoyer v. Neff (*Leading Cases* 4-12)

Commentary:
Glannon 69-71

Shift to Minimum Contacts

Provisions:
U.S. CONST. amend. V, XIV
Florida Long-Arm Statute (§ 48.193) (***Blog***)
California Long-Arm Statute (*Leading Cases* 57)
Fed. R. Civ. P. 4(k)
15 U.S.C. § 78aa (Securities and Exchange Act of 1934) (***Blog***)

Cases:
International Shoe Co. v. Washington (*Leading Cases* 14-22)
Daimler A.G. v. Bauman (Majority, Parts I-III) (*Leading Cases* 165-74)

Commentary:
Glannon 72-76, 93-100, 113-22

Modern Analysis *or The Shoe Algorithm*

Cases:
World-Wide Volkswagen Corp. v. Woodson (*Leading Cases* 78-94)
J. McIntyre Machinery America Ltd. v. Nicastro (*Leading Cases* 129-48)
Walden v. Fiore (*Leading Cases* 71-78)
Burger King Corp. v. Rudzewicz (*Leading Cases* 96-108)

Commentary:
Glannon 76-92

General Jurisdiction Revisited

Cases:
Daimler A.G. v. Bauman (Full Case) (*Leading Cases* 165-74) (FN 19 on ***Blog***)
Ford Motor Co. v. Montana Eighth Judicial Dist. (*Leading Cases* 179-86)

Commentary:
Glannon, 93-100, 104-09

Property, Service, Consent

Cases:
Shaffer v. Heitner (*Leading Cases* 36-54)

Commentary:
Glannon, 100-04

Personal Jurisdiction Review
Clemens v. McNamee (***Blog***)

Venue, Change of Venue, and Forum Non Conveniens

Provisions:
28 U.S.C. §§ 1390, 1391, 1404, 1406
Fed. R. Civ. P. 12(b)(3)
Fla. R. Civ. P. 1.060, 1.061 (***Blog***)

Cases:
Atlantic Marine Constr. Co. v. United States District Court (*Leading Cases* 325-34) (FN 6 on ***Blog***)

Commentary:
Glannon, 173-92

Sample Pleadings:
VOA v. BSO (***Pleadings***)

Erie

Introduction and History

Provisions:
U.S. Cost. art. I, § 8; U.S. Const. amend. X
28 U.S.C. § 1652

Cases:
Erie Railroad Co. v. Tompkins (*Leading Cases* 635-49)

Commentary:
Glannon 193-211

***Erie* and Procedure**

Provisions:
U.S. CONST. art. I, § 8; art. VI; amend. VII, X
28 U.S.C. §§ 2072-2074
Fed. R. Civ. P. 4(e)

Cases:
Hanna v. Plumer (*Leading Cases* 669-78)

Commentary:
Glannon 213-32

Puzzles: ***Blog***