

SYRACUSE UNIVERSITY COLLEGE OF LAW

Federal Courts Monday, May 12, 2003
Professor Thomas J. Maroney Three (3) hours

Special Instructions

1. This is an OPEN BOOK EXAMINATION. You may consult only:
 - a. the Casebook and 2002 Supplement.
 - b. any materials handed out by me for the course.
 - c. copies of any court decisions made by you
 - d. any notes, outlines, case briefs or similar material prepared by you.
 - e. any group outline if you were one of the actual participants in the writing of the outline.
 2. Please note the suggested time and page limitations. They reflect the relative value of a question. A “page” means one side of a sheet in an examination blue book or its computer equivalent.
 3. Organize your answers. THINK BEFORE YOU WRITE. Give me critical analysis. Apply the law to the facts.
 4. Do not post mortem the examination. This is a law school, not a medical school.
 5. Congratulations to the graduates. See the rest of you next fall..
- INSTRUCTIONS END

EXAMINATION CONTINUES

QUESTION ONE

45 Minutes

4-6 Pages

Alternative Dispute Resolution (ADR) has become “HUGE” (As Billy would say) over the last fifteen or twenty years. ADR takes a number of forms (mediation and arbitration, for example) and can be found in a number of fora. It has even “infiltrated” the federal courts. The Civil Justice Reform Act of 1990 required every Federal District Court to “implement procedures to reduce the cost and delay of civil litigation.” As part of its Expense-and- Delay-Reduction Plan, each District Court was required to include an ADR component.

The United States District Court for the Northern District of New York has adopted an ADR plan. Under the Plan, after a case has been filed and before a trial is held, the parties may be ordered by the court to participate in a non-binding ADR mechanism. One such mechanism included in the Northern District ADR plan is “EARLY NEUTRAL EVALUATION.” The NDNY Local Court Rules define ENE as “a process in which parties obtain from an experienced neutral (an ‘Evaluator’), a nonbinding, reasoned, oral evaluation of the merits of their case.” The Evaluator is selected from a list of volunteer

attorneys established by the District Court, and serves pro bono. He or she must have at least 15 years of law practice experience and be competent and trained to perform the duties of an Evaluator. The Evaluator is selected by agreement of the parties, if that is possible; otherwise the Court Clerk's Office will assign "an Evaluator with expertise in the subject matter of the law suit."

After the parties exchange essential information and position statements, the Evaluator convenes an ENE session that typically lasts about two hours, at which each side briefly presents the factual and legal basis for its position. The Evaluator may then ask the parties questions and help them identify the main issues in dispute and also areas of agreement. The Evaluator may also help the parties explore options for settlement. If settlement does not occur, the Evaluator then offers his or her opinion as to the settlement value of the case, including the likelihood of liability and the likely range of damages. With the benefit of this assessment, the parties are again encouraged to discuss settlement, with or without the Evaluator's assistance. They may also explore ways of narrowing the issues in dispute, exchanging information about the case or otherwise preparing efficiently for trial.

The Rules emphasize that "The Evaluator has no power to impose a settlement or to dictate any agreement regarding the pretrial management of the case" and that the process, "whether or not it results in settlement, is confidential."

Immediately upon conclusion of the evaluation session, the Evaluator is required to file a report with the APR Clerk in the Court Clerk's Office "indicating only whether the case settled, settled in part, or did not settle." If the ENE session does not conclude in settlement of all the issues in the case, the case will proceed to trial before a District Judge.

Larry Lewis is a prominent plaintiffs' personal injury lawyer in the Syracuse area. He refers to himself as "Larry the Litigator" and his radio and TV advertisements tout him and his law firm as "The *Real* Heavy Hitters!"

Larry recently filed a 42 U.S. Code Section 1983 civil rights action for damages in the District Court for the Northern District. The Plaintiff is a 63 year old man. The Defendants are two Onondaga County Sheriffs deputies and the County itself Plaintiff's Complaint alleges that the Defendants deprived him of his Fourth Amendment right to be free from any unreasonable search, and seizure and his Eighth Amendment right to be free from cruel and unusual punishment. It further alleges that the Plaintiff suffered a fractured skull, three broken ribs and numerous contusions and abrasions, was detained against his will, and had his home forcibly entered and ransacked, when the Deputies executed a search warrant at his home on March 1, 2003. Shortly after the incident, the County Sheriff acknowledged that the Plaintiff's address was not the address listed on the search warrant. In other words, the Deputies had gone to the wrong address.

Although Larry the Litigator files most of his cases in state court, he filed this 1983 action in federal court because it seemed like the most appropriate court in which to

proceed. Larry smells liability and a substantial recovery here once the jury hears the Plaintiff tell his story! Larry also knows that the prevailing party in a 1983 action can recover attorney's fees, Larry, to put it mildly, is anxious to "get it on" in District Court.

Unfortunately, the District Court has directed the parties to submit their dispute to ENE before a volunteer Evaluator, in accordance with the process described above. The parties were unable to agree upon a neutral Evaluator, so the Clerk's Office appointed Alex James, Esq. an experienced personal injury lawyer, as the Evaluator for Larry's case.

Larry the Litigator is *not* happy about being ordered to participate in ENE. He was heard to remark, 'What the hell do I care about Alex James' opinion of what my case is worth? I've been doin' this stuff for 30 years. I've forgotten more than Alex James will ever know! The only evaluation I care about is the one the jury makes of my case in the courtroom and the jury room. This ADR stuff is just a bunch of 'touchy-feely bull' and a waste of time. You bring your lawsuit to have a real Article III judge *preside* and a real jury *decide* who's right. Let's get on with it.'

Larry feels so strongly that he even considered not showing up for the scheduled ENE session. He re-read the ENE Rules, however, and noticed they provide that "No party may avoid or postpone any obligation imposed by the order of reference on any ground related to the ENE program." (Emphasis in original.) He may have contempt for ENE but he doesn't want to be held in contempt of court!

You are a summer intern in Larry's office. He remains perplexed. He knows of your vast knowledge of and deep interest in Federal Courts. He has therefore asked you to prepare a Memorandum of Law giving him your considered legal opinion whether mandatory, non-binding ENE undermines the role of the federal District Courts and thereby violates Article III of the U.S. Constitution. If you conclude that it does, Larry may bring some kind of a civil proceeding or motion or something to get out from under the ENE obligation. If you conclude that it does not, Larry will sulk a bit and then show up at the ENE session. Write the Memo for him.

QUESTION TWO

45 Minutes

4-6 Pages

Whatever your answer to Question One, assume Larry the Litigator has concluded that the ADR process in Federal District Court is just too big a nuisance to bother with. He has always felt more at home in the state courts anyway and has a high regard for the local judges. As a result Larry is thinking about dismissing the federal court Complaint and refile the same Section 1983 action in New York State Supreme Court, the state court of general trial jurisdiction. Larry is "pretty sure" he can do this and he's "pretty sure" the State Supreme Court could and would hear the case if he filed it there. Write Larry another Memorandum of Law, this one giving your considered legal opinion whether the State Supreme Court would have subject matter jurisdiction over the 1983 action and whether it would also have an obligation to hear the case on the merits.

QUESTION THREE

45 Minutes

4-6 Pages

Whatever your answer to Question Two, assume that Larry withdrew the suit from federal court and re-filed it in the New York State Supreme Court. Just recently, Larry received some kind of federal court “papers” that seem to say the Defendants have “removed” the case from state court to federal court. Larry is wondering how the heck they can do that. Check the Removal statute, 28 U.S.C. Section 1441 (a) and (b), and write Larry another Memorandum of Law, stating your considered legal opinion whether the Defendants can lawfully remove the case from state court to federal court and whether the Plaintiff would have any chance of getting it remanded to state court..

QUESTION FOUR

45 Minutes

4-6 Pages

You will recall our classroom discussion of *Spargo et al. v. New York State Commission on Judicial Conduct*, decided on February 20, 2003. You will also recall that in *Spargo*, David N. Hurd, U.S. District Judge for the Northern District of New York, upheld the Plaintiffs’ contentions that certain provisions of the New York State Code of Judicial Conduct were unconstitutional on their face and as applied, because they infringed Plaintiffs’ First Amendment rights. The suit was the “typical” Section 1983 action for declaratory and injunctive relief. The Plaintiffs sought a declaratory judgment that the particular code provisions were unconstitutional and an injunction against their enforcement. Judge Hurd agreed and granted the relief sought in full.

The case Caption names as Defendants: (1) the “NEW YORK STATE COMMISSION ON JUDICIAL JUDICIAL CONDUCT;” (2) “GERALD STERN, individually and as Administrator of the [New York] State Commission on Judicial Conduct;” and (3) “HENRY T. BERGER, individually and as Chairperson of the New York State Commission on Judicial Conduct.” Judge Hurd made no mention in his opinion of the fact that the Commission itself was a named Defendant.

You can be sure the Commission will appeal Judge Hurd’s decision. As a matter of fact, it is considering the grounds for its appeal right now. You have been hired as a summer intern by the Commission (After all, Mr. Stern is a proud alum of the Syracuse University College of Law.) He never took a course in Federal Courts, however. Mr. Stern is therefore delighted to have your expertise available. Among the grounds the Commission is considering for its appeal is the possible impact of Sovereign Immunity and Official Immunity. Mr. Stern wonders why the suit wasn’t dismissed on the basis of Sovereign Immunity, since the Commission was a named party Defendant. He also wonders why the court did not hold that Sovereign Immunity barred the relief sought and actually granted. Similarly, he wonders why he as Administrator and/or Mr. Berger as

Chairperson of the Commission weren't found to have absolute Official Immunity from suit, considering the nature of the Commission's function.

The State Commission on Judicial Conduct was created in 1977 by an amendment to the New York State Constitution, "to receive, initiate, investigate and hear, complaints regarding the conduct, qualifications and performance of state court judges." After a hearing, the Commission can determine that one of a range of sanctions should be imposed or that no sanction should be imposed. The Commission's written determination that a particular sanction is appropriate is forwarded to the Chief Judge of the highest state court, the New York Court of Appeals. The Court of Appeals, after its review of the Commission's determination, can accept it, reject it, impose a different sanction or impose no sanction at all.

Write another Memorandum of Law, answering the questions Mr. Stern has posed.

EXAMINATION ENDS