

COURSE OUTLINE AND GUIDELINES

1. What this Course Is All About. In Appellate Advocacy, you will litigate a simulated appeal. In September and early October, you will research and write an appellate brief. I will critique the brief, and you will rewrite it. Finally, you will orally argue the merits of your client's case. This is your first substantial opportunity to do the lawyer's work of taking a case, building a theory, and trying to persuade a bench to adopt your theory. One goal of the course is for you to learn appellate writing and research skills. Another goal is to help you develop the kind of creativity, organizational skills and sense of responsibility that enable a lawyer to make things happen for his or her client in a timely and effective manner.

To help you attain both of these objectives, your appellate problem will be provided to you in the form of a "Joint Appendix" or "Record" which contains selected excerpts of the trial transcripts, exhibits and other documents that the trial lawyers have selected as necessary to resolve the issues on appeal. You will have to analyze the Joint Appendix, and in reference to it, you will have to formulate the answers to numerous questions in framing your appellate strategy and tactics. The Joint Appendix may seem cryptic at first, but as you work with this raw data, you will engage in the real process of lawyering. Many attorneys say that, more than any other required course, Appellate Advocacy taught them how to work like a lawyer, regardless of their ultimate practice area choices.

2. How Your Work Is Weighted for the Final Grade. Of the final grade, the initial brief counts for 35%; the rewrite will count for 40%; the oral argument will count for 15%; and the final 10% will reflect an evaluation of your preparation of any other writing assignments that may be periodically assigned over the semester (including the research journal and drafting assignment); and your preparation for and participation in class.

3. Classes. During the regular semester, Appellate Advocacy will meet on Wednesdays from 10:10 until 12:00 in Room 205. We may have some extra class meetings at the beginning of the semester so that we may finish the course early; I will give you advance notice if that is the case.

4. Texts. The text for the course is Neumann, Legal Reasoning and Legal Writing, which you already own from the course in Legal Writing. The supplementary text is Introduction to Advocacy (7th ed.). In addition, your written work must conform to the rules in the Bluebook (17th ed.). I may also give you supplemental materials to be read prior to particular classes over the semester.

5. Partnering for Appellate Advocacy. For the first and second drafts of your appellate brief and for the oral argument, you will be teamed with another student, either of your choosing or randomly assigned on the first day of class. The appeal you will be briefing and arguing will contain two major independent issues, with each partner responsible for independently researching and drafting the argument for one issue, as well as the related question presented and point headings. The partners will work jointly to produce the Tables of Authorities and Contents, the Preliminary Statement, the Summary of the Argument, the Statement of the Case, and the Conclusion. At oral argument, each partner will be responsible for arguing his or her particular issue(s).

6. Choosing a Partner. On the first day of class, you may pair-up with a partner of your choice. After the first class, those of you who have not yet chosen partners will be assigned a partner by me, based in part on your availability for oral argument, as indicated on the Student Information Form that you will submit at the end of the first class.

It is critically important that you choose a partner with whom you are compatible. You should analyze each others work habits, personal schedules, computer compatibility, etc., rather than simply assuming that because you and another student are friends you will be able to work together effectively.

7. When Things Will Happen During the Semester. The following provides you with a general overview of the schedule for the semester:

On the first day of class, you will return the form attached to the accompanying memorandum, outlining your availability for oral argument in November and early December. I will pair teams up for oral argument based on the responses I receive.

You will receive your Joint Appendix at the first class session. Start analyzing and researching the issues it presents immediately. On September 12th, you will be required to submit a fact chronology and research journal that reflects substantial research on the issues presented.

Before noon on October 10th, you will submit your brief. (See ¶ 14 for details.)

In October, I will meet with you individually to discuss your first draft, after which you will have 14 days to rewrite it.

In November or early December, you will orally argue your case before a panel of "judges."

8. Your Case. You will receive your Appellate Advocacy case in the form of a record of selected proceedings in the court (or courts) below. The record contains numerous and varied documents, which may include transcripts of testimony in various forums, pleadings, judicial opinions, and sundry other items. The Federal Rules of Appellate Procedure require that the parties select, compile, and submit on appeal, only those portions of the trial court proceedings that are relevant to the appeal. That compilation of selected material is called the "Joint Appendix." Your Joint Appendix, therefore, may not have all the documents that you would expect to have been generated during the life of a case in the trial court. Nonetheless, the Joint Appendix you receive will be more than adequate to support your client's argument. Where there is any question (and there probably should not be), assume that any notices of appeal or petitions for leave to appeal or for certification have been properly and timely filed, and that the Joint Appendix has been properly compiled and transmitted to the appropriate court.

9. Researching the Brief. When you are using hard-copy materials, be considerate of your fellow students' need for the same resources.

You may use the computerized research services (LEXIS and Westlaw). **You may not seek advice from anyone, including, but not limited to, fellow students or LEXIS or Westlaw representatives, for the purpose of helping you formulate your substantive research and computer search strategies.** You may obtain technical advice as to how to access various functions, etc.

10. Asking Questions and Getting Information. One of the goals of Appellate Advocacy is to help you become independently creative. This assignment is designed to develop your individual analytic and legal writing skills and to help your teacher evaluate those skills. Your paper should therefore represent your **independent** effort. Questions regarding the substance of your assignment -- the law, the record, etc. -- will be answered primarily on two occasions:

1. in the strategy class; and
2. at the conference described in ¶ 16.

On the other hand, if you suspect that your assignment has a typographical or similar error, or some glaring internal inconsistency, tell me personally or send me an e-mail. I will also be available in my office on a drop-in basis, but I am less likely to answer substantive questions on an individual basis. Certain types of conversations with other students and with people outside the law school are also prohibited. See ¶ 11.

11. Academic Honesty. The Law School's Code of Academic Conduct provides as follows in relevant part:

I(B). Plagiarism.

1. Definition. A student plagiarizes when the student represents the work of any other person as the student's own work. Plagiarism includes but is not limited to:

- a. copying or substantially copying someone else's words without both citing the author of the quotation and using either quotation marks or an indented block quotation;
- b. paraphrasing someone else's words or work without citing the source.

2. The violation. A student violates the Code of Academic Conduct when the student:

- a. purposely plagiarizes or aides another student to plagiarize; or
- b. plagiarizes with knowledge of circumstances which should alert a reasonable

student that there is a substantial risk that the student would be plagiarizing.

Read this very carefully. Among other things, be sure to put quotes around all words not of your own composition, and attribute each quote properly to its source. Attribute each thought not originally yours to the source from which you got it.

The Code of Academic Conduct also contains other prohibitions that are particularly relevant to this course. Section I(A)(3) punishes making "a material misrepresentation for the purpose of obtaining a benefit in connection with any matter for which academic credit is given." For example, if you make a false statement as an excuse for turning in an assignment late, you may be punished under this section.

If you violate any part of the Code of Academic Conduct, you will be reported to the Vice Dean for disciplinary action.

While you may or may not find it useful to talk with your classmates about the issues presented by this assignment, you must not:

1. show anything you have written -- even fragments of a "rough draft" -- to anyone else (including your partner) for any purpose before you turn your brief in; **this prohibition includes any help in editing or proofreading from anyone at anytime** -- edit your own work;¹
2. discuss your assignment or your brief with a lawyer or judge -- even one to whom you are related -- until after you have made your oral argument in November or December;
3. discuss your oral argument (before you actually make the argument) with a lawyer or judge or with another student who has already made an oral argument;
4. attend any other oral arguments on your assignment until after you have made your own oral argument (although you may attend one oral argument being conducted in another section, if you wish to get a feel for the process).

¹ This prohibition does not extend, of course, to the collaborative efforts you and your partner will undertake to produce a joint Statement of the Case, Questions Presented, Summary of the Argument and the Tables of Contents and Authorities.

12. Writing the Brief. Chapters 28 and 29 in Neumann explain the process of brief-writing. In addition, consider the following:

Before writing, make a list of the issues you must resolve in order to persuade the court to rule in your favor. Then, analyze the relevant legal authorities to determine the effect that each authority will have on each issue, taking into account the hierarchy of authority, the narrowness or breadth of the rule for which the authority stands, the policy enunciated in or implied by the authority, and any synthesis into which the authority might fit. For a case, determine also whether it is analogous to or distinguishable from the evidence in the Joint Appendix. Then, outline your analysis, issue by issue, and write from that outline.

Organize your discussion around issues and, within issues, around rules and their elements. Use the authorities as needed to substantiate the law and your interpretation of it. Vary the paradigm as necessary to present your thinking clearly and concisely. To the extent necessary to support your conclusions, you should analogize, distinguish, synthesize, elicit policy, and reconcile precedent. Be careful to account for arguments adverse to your conclusion.

If you make inferences from the facts, state the inferences explicitly and justify them. Cite and quote according to Bluebook rules, remembering to cite to the Joint Appendix for any fact. Remember that facts are treated in various ways in different parts of the record. Not all "facts" are of equal evidentiary value. For example, a "fact" stated by an attorney on the record, or testified to by a witness, may have different qualities and value to an appellate advocate than a fact found by the trial court and stated in the court's opinion.

Remember: You are not likely to do a good job unless the brief you turn in is a third or fourth draft. Start digesting your record and researching the issues immediately upon receiving your record, and allow plenty of time to write several drafts.

13. Required Form of the Brief. Your brief may not exceed 35 pages, exclusive of the title page and Table of Contents and Table of Authorities. Briefs must be typed on 8.5 x 11-inch numbered pages and triple-spaced (except for headings and block quotations), with a maximum of 18 lines per page. Use one-inch margins on all four sides of each page. In order to keep the page limits fair for all students, your paper must be printed in 12 point font. If you are in doubt, the type face you use should appear to be of approximately the same size as the page you are looking at now.

Citations must conform to the Bluebook. Submissions must be clear and legible.

Your name should appear only in one place in the brief: on the back of the last page. Use a pseudonym for the cover and indorsement on the last page.

14. Submitting Your Brief.

Original Brief: Place your brief in my in box in Room 216; have my assistant, Lana Booker, time stamp both the copy you give me and the one that you will keep.

Rewrite: On the rewrite, you will revise it in accordance with the things we discuss in the Group Critique and in our conference, as well as my comments on your paper.

When your rewrite is due, submit to me a time-stamped copy of the rewrite together with my marked-up copy of the original brief. Please place these items in an envelope bearing your name and the name of the party whom you represent and put the envelope in my in box.

For several years to come, always make sure that you have at least one clean (unmarked-up) copy of your rewritten brief; you may want to use it as a writing sample. After a certain point, I will throw away everything you give me (and my copy will be marked up anyway.) In the unlikely event that I lose your brief before computing the final course grade, you are expected to supply another copy. For that reason, and to avoid other potential disasters, always keep your most recent draft of your brief backed up on both your hard drive and on a CD or a floppy disk.

15. Requests for Extensions of Time: Neither senior partners nor court clerks nor clients (for those of you planning a transactional practice) are sympathetic to requests for extensions of time from lawyers who cite computer or printer problems, religious holidays, or other reasons that demonstrate poor planning or organization skills. You need to prepare yourself for this demanding and unforgiving environment. Accordingly, requests for extensions will be granted only for documented illness, family emergency, or other cause beyond your control. Any extension must be obtained before the brief is due.

Make sure that you finish your "final" draft of the brief with sufficient time to spare to correct any unforeseen computer or other logistical problems. Remember that if you rely on university computers and printers there will likely be availability problems as the deadline for the brief approaches.

In the absence of an extension, lateness will result in substantial penalties, which will increase dramatically as each day goes by.

16. Conferences and Preparation for Conferences.

Original Brief: After I have marked up the original brief, I will meet with you to go over it in detail. To get the most out of the critique, you should study my comments carefully before the conference begins. You should review any portions of the Legal Writing text or the Bluebook to which my comments might refer you, and bring with you your research journal and any other material you think might be helpful in our discussion of your work. If you are unprepared for the conference, I will have to reschedule it, and that will work to your disadvantage in two ways. First, the 14 days you have to rewrite begin on the day of the originally scheduled conference -- and not any date to which it might be rescheduled if the rescheduling occurred because of your lack of preparation. Second, the rescheduled conference might not be a time that is particularly convenient for you (since you have to be squeezed into an already existing critique schedule).

Rewrite: In January, your marked-up rewrite will be available from your folders in Room 216. You must return the marked-up rewrite after making a photocopy.

17. Oral Argument. Each student is permitted 10 minutes of oral argument. An oral argument schedule will be distributed in October. Appear at the appointed place a few minutes before the time scheduled for argument in suitable courtroom attire.

18. How Your Work Is Graded. On Assignments 1 and 2, you will receive a number grade based on a 100 point scale. Some of the things that I look for in determining your grade are as follows:

Legal Writing: Organization, clarity, precision, conciseness, forcefulness, proper presentation of authority and rules, correct citation form and adherence to other Bluebook rules, use of quotations, paragraph structure, appropriate format, etc.

General Writing: Grammar, punctuation, spelling, diction, style and other characteristics of good writing. I will expect you to proofread your briefs thoroughly to find errors.

Analysis and Research: Formulation of issues; finding, interpreting and selecting authority most appropriate to support specific points; legal reasoning; emphasis and de-emphasis of facts; development of policy arguments; and persuasive strategies.

The following is intended to give you some more detail as to what your number grade means:

90% or above: The work shows proficiency at the skills expected and control of the subject matter. Criticisms are for the most part aimed at polishing the work or pointing out alternatives.

80% - 89%: Significant improvements are needed, but at this stage the faults are not cause for worry. The work shows some -- but not complete -- understanding and application of the skills expected. Problems and errors do not cripple the writing at this point, but they would be serious defects at a more advanced level, perhaps even on the rewrite. In other words, the product is effective, but not by a large margin.

70% - 79%: The work shows weaknesses that are cause for worry. The faults are substantial and seem to be caused by serious misunderstandings of the task at hand. The product is ineffective, but not by a large margin.

69% or below: The work has fundamental deficiencies and reflects only a rudimentary understanding of the skills involved. The distance to effectiveness is large, and special efforts are necessary to bring skills up to a level of adequacy.

These measures are intended to give you a meaningful idea of the quality of your work. Evaluation standards are higher on later assignments than on earlier ones; you are expected to demonstrate an improved mastery of the necessary skills as the semester progresses.

19. Final Grade for the Course. At the end of the semester, your assignment evaluations will be tabulated through a formula based on the weight of each assignment (see ¶ 2, above), and the weight of the various categories of analysis (e.g., Legal Writing, General Writing and Analysis and Research). The resulting figures will be used to produce one letter grade for every student, representing the work of the entire semester. In this class, however, it is the evaluations described in ¶ 18 that give you a true sense of how your work is received; the final letter grade you receive is a permanent record of your work, stated in such a way that your performance can be compared to that of other students.

20. Communications. My office is Room 100B, located in the Library. My office telephone is 463-5927. My assistant, Lana Booker, sits at the desk at the front of Room 216; her telephone number is 463-5928. If you'd like to see me, you may stop by to see if I am available, or arrange a mutually convenient time for us to meet by leaving me a note or sending me an e-mail.

If I am not in my office, the best way to communicate with me is by e-mail. I check my messages frequently, and that is how you will receive the quickest response to your inquiry. If I need to communicate with you, I will do so by e-mail. You should check your e-mail regularly for messages from me, and be certain to let me know if your e-mail address changes. My e-mail address is LAWARS@hofstra.edu. Please do not ask me to call you, the large number of students in the class make it impossible for me to do that.

You should also check the Bulletin Strip outside Room 216 and your mailboxes regularly for notices from me. You will be responsible for whatever information I convey to you through all or any of these methods of communication, as well as assignments I make orally in class. Even an excused absence from class does not justify being uninformed.