

SYLLABUS

APPELLATE ADVOCACY LAW 580-1/LAW 580-2 SUMMER 2008

UNIVERSITY OF LAVERNE COLLEGE OF LAW

Professor	Email	Telephone	Class Hours
Jerry Behnke	Jerry.behnke@usdoj.gov	(951)276-6211	Tues. & Thurs. 8:30 – 10:30 p.m.
Robert Stacy	Robert.Stacy@usdoj.gov	(951)276-6211	Tues. & Thurs. 8:30 – 10:30 p.m.
Victor R. Stull	vstull@da.sbcounty.gov	(909) 387-6459	Mon. & Wed. 6:30 – 8:20 p.m.

OFFICE HOURS: By appointment.

CLASSROOM: Room 219, Moot Courtroom

Please feel free to call or e-mail with questions or concerns, or to make arrangements to meet with your professor. The writing process can be frustrating and students sometimes find themselves “stuck” in one phase or another. Don’t suffer in silence!

COURSE OBJECTIVES:

To learn how to effectively write a persuasive Appellate Brief, using a fictitious case, and then to persuasively argue the case before a panel of appellate justices/judges.

To enhance the learning experience, students will be assigned Opposing Counsel for Oral Argument and for exchanging of Briefs in preparation for Oral Argument.

Students are *highly encouraged* to attend a live oral argument at a California Court of Appeal, California Supreme Court or Ninth Circuit U.S. Court of Appeal (see attached schedule).

GRADING:

The final grade will be calculated as follows: 60% Brief, 35% Oral Argument, 5% Oral Argument Notebook.

A Brief Grading Sheet, which governs the grading of the Briefs, and an Oral Argument Grading Sheet, which governs the grading of the oral argument, will be made available to each student. Students will also be required to prepare an Oral Argument Notebook in preparation for oral argument.

The mock appellate justices presiding over students' oral argument will critique the oral arguments. The grades assigned to the briefs and oral arguments will be calculated solely by the Professor.

All assignments are due within the first five minutes of class. Late submissions will receive a deduction in points as follows:

- Draft submissions:
 - a 2-point deduction if submitted more than 5 minutes after class begins but less than 24 hours late, or
 - a four point deduction if submitted between 24 and 48 hours late.
 - After 48 hours the draft assignment will not be reviewed by the Professor
- Final Submission:
 - an initial 10-point deduction from the total brief score and
 - an additional 3-point deduction for each additional 24-hour period the brief is late.
 - After 48 hours the brief will not be accepted.

ATTENDANCE & PARTICIPATION:

Students must attend all scheduled classes and must timely accomplish all required assignments. Arriving to class over ten minutes late, or leaving class over ten minutes early will constitute ½ an absence.

Students may not make-up absences, except by attending at least two hours of live oral argument at a California Court of Appeal, California Supreme Court or Ninth Circuit U.S. Court of Appeal. Only one absence may be made up in this manner.

Each student must participate in **three** videotaped practice arguments and bring a blank videotape to practices. Students are expected to pay attention while classmates practice, take notes of the questions asked of classmates during practice, and assist in judging practices.

REQUIRED TEXTS:

- Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* (2d ed. 2006).
- Strunk & White's, *The Elements of Style* (4th ed. 1999).
- The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation* (18th ed. 2005).

RECOMMENDED TEXTS:

- Bryan A. Garner, *The Redbook: A Manual on Legal Style* (2d ed. 2006).
- Bryan A. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* (2d ed. 2004).
- Matthew G. Moffett, *Moot Court Success* (3 Cassettes) (2d ed. 1996).

SUGGESTED TEXTS:

- Maria Ciampi and William Manz, *The Question Presented: Model Appellate Briefs* (1st ed. 2000).
- Peter Irons and Stephanie Guitton, *May It Please the Court: The Most Significant Oral Arguments Made Before the Supreme Court Since 1955* (October 1996) (cassette tapes). (Available at BarnesandNoble.com or Amazon.com.)

REQUIRED ASSIGNMENTS:

- 1) Appellate Brief (various rough drafts and the final draft), 60%;
- 2) Oral Argument, 35%; and
- 3) Oral Argument Notebook, 5%.

For the first class meeting, be prepared to list any times you are NOT available during the weeks of July 14 - 18 (Monday through Friday) between 2:00 and 10:00 p.m. The Appellate Advocacy Competition is tentatively scheduled for July 14 & 15 and the Best Oralist Competition will be held during the week of July 16. A tentative sign-up sheet will be provided during the first day of class to determine the most appropriate dates and times. For the purpose of scheduling the competition, unavailability includes conflicts with work, other courses, childcare, or for religious reasons. If the conflict is with another course, you'll need to list the course, professor, and time.

ASSIGNMENTS / CLASS SCHEDULE

	<u>Topic / Reading Assignment</u>¹	<u>Assignment Due</u>²
<u>Class 1</u> June 2/3:	Introduction; research skills; brief writing Chapters 1 (Introduction), 2 (Appellate Jurisdiction and Standards of Review), 3 (Before You Write), and 8 (Following Format Rules).	Add Appellate Advocacy Spring 2007 to your TWEN Courses Sign-up Sheet to Determine Competition Dates (see “Assignments” above) Problem distributed
June 3& 4	California Supreme Court holding oral arguments in Los Angeles. Students are <i>highly encouraged</i> to attend a live California Supreme Court oral argument. Call for exact oral argument schedule (see attached list).	
<u>Class 2</u> June 4/5:	Persuasive writing; stating facts and argument. Chapters 4 (Facing the Blank Page), 5 (Drafting the Argument), and 9.1 – 9.2, (Questions Presented, Statement of the Case).	First draft of Brief Cover Page and Issues
<u>Class 3</u> June 9/10:	Writing the Opening Brief. Answer specific questions regarding researching and writing the Opening Brief. Chapters 9.3 (Summary of the Argument) and 6 (Using Case Authority Effectively).	First draft of Statement of the Case (including Procedural History and Material Facts)
<u>Class 4</u> June 11/12:	Persuasive Writing Techniques; Persuasive Point Headings. Answer specific questions about formatting. Chapters 9.4 (Point Headings) and 11 (Exploiting Opportunities for Persuasion).	First draft of Standard of Review and Summary of Argument

¹Reading Assignments are from Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* (2d ed. 2006)

²Assignments are due during the first 5-minutes of class. Late submissions will result in point deductions as described above in “Grading”

	<u>Topic / Reading Assignment</u> ¹	<u>Assignment Due</u> ²
<u>Class 5</u> June 16/17:	<p>Questions regarding the Opening Brief and Oral Argument Techniques discussed.</p> <p>Chapters 10 (Making Your Document Reader-Friendly) and 13 (Oral Argument).</p> <p>Videotaped first round of oral argument, entire class.</p>	<p>Complete Draft of Brief (including all necessary parts, such as Cover Page, Table of Contents, Table of Authorities, etc.)</p> <p>(Remember, there is a 25-page limit, excluding Table of Contents, Table of Authorities, and Appendices.)</p>
<u>Class 6</u> June 18/19:	No class. Review Drafts of Brief with Professor, by appointment during posted hours.	
<u>Class 7</u> June 23/24:	<p>Editing & Polishing</p> <p>Chapters 7 (Seeing What You Have Written) and 12 (Polishing), and Appendices A-1 (Putting Citations in Their Place, A-3 (Changing Sentence Structure to Accommodate Citation Form), and A-5 (Common Punctuation Problems).</p> <p>Second video-taped first round of Practice Rounds of oral argument (entire class.)</p>	Revised complete draft of Opening Brief
<u>Class 8</u> June 25/26:	No Class – students are to work on editing their briefs.	
<u>Class 9</u> June 30/ July 1:	Video-taped third round of Practice Rounds of oral argument, entire class. (Each student must participate in three practice arguments.)	<p>OPENING BRIEFS DUE.³</p> <p>Briefs must be turned in and exchanged with Opposing Counsel within the first five minutes of class. (Two copies for Professor, one for exchanging with Opposing Counsel.)</p>

³Briefs not submitted during the first five minutes of class will result in point deductions as described above in “Grading”

	<u>Topic / Reading Assignment</u> ¹	<u>Assignment Due</u> ²
<u>Class 10</u> July 2/3:	No class – students are to work on their oral argument presentation and binders.	
<u>Class 11</u> July 7/8:	Chapter 14 (Moot Court Competitions). Video-taped Practice Rounds of oral argument. (Each student must participate in three practice arguments.)	
<u>Class 12</u> July 9/10:	No class – students are to work on their oral argument presentation.	
<u>Class 13</u> July 14-16:	GRADED ORAL ARGUMENTS. Announcement of Top Four Oralists in each section following conclusion of each section's graded rounds.	
<u>Class 13</u> July 16 - 17:	BEST ORALIST COMPETITION for each section (top four oralists per section). Schedule TBA	
<u>July 19</u>	MOOT COURT HONORS COMPETITION All students are encouraged to attend.	

Winners of **Best Brief** and **Best Oralist Awards** announced for each section at Moot Court Reception following competition.

Students are *highly encouraged* to attend a live oral argument at a California Court of Appeal, California Supreme Court or Ninth Circuit U.S. Court of Appeal.

Options For Attending Appellate Arguments:

California Courts of Appeal
Fourth Appellate District:

Division Three
925 North Spurgeon Street
Santa Ana, CA 92701
714.558.6777

(Oral arguments are heard the third week of each month.)

Division Two
3389 Twelfth Street
Riverside, CA 92501
951.248.0200

(Call for oral argument schedule)

Second Appellate District:
Ronald Reagan State Building
300 South Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013
213.830.7000

(Call for oral argument schedule.)

U.S. Ninth Circuit Court of Appeals
125 S. Grand Avenue
1st Floor
Pasadena, CA 91105
626.229.7250

(Call for oral argument schedule.)

Supreme Court of California
Ronald Reagan Building
300 South Spring Street
2nd Floor, between the North and South Towers
Los Angeles, CA
213.830.7570

(Oral arguments on June 3 (afternoon session beginning at 2p.m.) and June 4 (morning sessions beginning at 9 a.m.)

(Have the Appellate Court Clerk or Bailiff date and sign this page and return it to your professor, with your name on it, as proof of attendance at oral argument.)

BRIEF STRUCTURE AND FORMAT⁴:

The structure of your Opening Brief must comply with the 9th Circuit Court of Appeals requirements and should consist of the following elements:

- I. Cover page.
- II. Table of Contents.
- III. Table of Authorities.
- IV. Statement of the Case.
 - A. Statement of Facts.
 - B. Procedural History.
- V. Questions Presented.
- VI. Standard of Review.
- VII. Summary of Argument.
- VIII. Argument.
- IX. Conclusion.

- I. Cover page: shall contain the number of the case centered at the top; the name of the court; the title of the case; the nature of the proceeding and the name of the court below; the title of the document; and the name, address, and phone number of the attorney filing the brief. Petitioners/Appellants normally use a light blue cover; Respondents/Appellees normally use a red cover.
- II. Table of Contents: headings index with corresponding page numbers and argument headings. A properly prepared Table of Contents should inform the reader of your argument before the brief is ever read.
- III. Table of Authorities: see the examples in Beazley, Appendix C. Group authorities appropriately. Make sure the citations are perfectly bluebooked (but without pinpoint in the table) and make sure each page reference to the brief is accurate.
- IV. Statement of the Case:
 - A. Statement of the Facts: this is a complete and accurate presentation of the facts as determined in the lower court proceeding. Your Record on appeal will be numbered as numbered in the problem. Citations to facts found in the Record should be cited to the specific page where the fact can be found; e.g.: "(R. at 3-12)," meaning Record at page 3-12. Include the name of the parties and introduce any abbreviations you wish to use in your brief; e.g.: James Smith ("Smith.")

⁴See also sample briefs contained in the Beazley textbook as Appendix C, and also refer to "Professor McVay's Top Ten Tips for Moot Court Competition Brief Writing."

The Statement of Facts should be accurate but presented in a way that is helpful to your case. Emphasize helpful facts, and de-emphasize damaging facts, but damaging facts must be included. The order of presentation can be either chronological or topical. The Statement of Facts is a critical part of the brief and is often rewritten many times. Most actual appellate cases are won or lost based on the facts.

- B. Procedural History: set forth concisely the nature of the action or proceeding and the relief sought and the Judgment or ruling of the lower court(s).

- V. Questions Presented: these are the issues raised on appeal. They should be couched as affirmative interrogatories so that the answer in your favor is implied. (Note: if the brief is to the U.S. Supreme Court, the Questions Presented should be the second part of the brief, directly following the title page and preceding the Table of Contents and Authorities, per Supreme Court rules.)
- VI. Standard of Review: state the legal standard of review for the appellate court to follow and supporting case law.

- VII. Summary of Argument: briefly summarize your argument, so that the reader has a condensed version of your brief to read, no longer than two pages.

- VIII. Argument: your legal argument in support of your positions. Use many subheadings, so that the subheadings alone state your argument. Refer to the example in the text book.

- IX. Conclusion: a brief conclusion, usually consisting of one paragraph, followed by your dated signature.

IN GENERAL:

Opening Briefs must be typed on plain paper (not on pleading paper) using either Courier New 12-font or Times New Roman 13-font. Briefs will be judged pursuant to the Brief Scoring Sheet made available to all students.

The text of the Opening Brief, exclusive of the Table of Contents and Table of Authorities, **may not exceed 25 pages** in length. Double-space except for block quotations (of 50 or more words) and headings. Failure to comply with the page limit or font size will result in an automatic **deduction of 10 points** from the total brief score. Read and follow the *Bluebook* citation rules. Failure to comply with these rules will result in a **deduction of up to 6 points** from the total brief score.

Briefs should be velo-bound with a front and back cover in the appropriate color of cardstock-weight paper. In lieu of velo-binding, students may use three staples on the left side of the brief, but must cover both sides of the staples with tape. Spiral binding is not recommended.