

**Appellate Writing (Law 098)  
Fall 2007**

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**I. COURSE INFORMATION**

**A. Instructor:** This course is taught by Adjunct Instructors. You will be assigned an Adjunct according to the Appellate Writing section for which you registered. You should direct questions about the class materials or the appellate problem to your Adjunct Instructor. You should direct general questions, comments, concerns, or suggestions about the LRWA Program to: Elizabeth A. Keith, Assistant Director of Legal Research, Writing & Analysis, [ekeith@gmu.edu](mailto:ekeith@gmu.edu), (703) 993-9158, Room 222, Truland Building or Jennifer A. Hodge, Director of Legal Research, Writing & Analysis, [jhodge4@gmu.edu](mailto:jhodge4@gmu.edu), (703) 993-9679, Room 224, Truland Building.

**B. Required Texts:**

1. Ruggero J. Aldisert, Winning on Appeal: Better Briefs and Oral Argument, (NITA 2003) (“Aldisert”).
2. Harvard Law Review, The Bluebook: Uniform System of Citation (Harvard Law Review Association, 18th ed. 2005) (“The Bluebook”).

**C. Recommended Texts:**

1. Bryan A. Garner, The Redbook: A Manual on Legal Style (Thomson West, 2d ed. 2006).
2. Richard C. Wydick, Plain English for Lawyers, (Carolina Academic Press, 4th ed. 1998).

**II. INTRODUCTION**

Welcome to Appellate Writing! This is a two-credit course.

This semester you will continue to improve upon the persuasive writing skills learned in Trial Level Writing. The focus of this course is persuasive writing in an appellate litigation context and during the semester you will represent both the appellant and appellee on brief and engage in in-class oral arguments. Please remember, there are many differences between your first and second years of LRWA. Here is some information to help you adjust to those differences:

First, your instructors this year are practitioners with significant litigation and appellate experience. The Adjunct Instructors have their own practices, clients, government positions, and families. They are involved with GMUSL because they care about the GMUSL community and about the training of new lawyers. We are very lucky to have these dedicated and experienced individuals involved with our program. You need to remember that they will not always be available to e-mail or call you back immediately. Please treat the Adjunct Instructors with the utmost respect at all times.

Second, Appellate Writing is considered an advanced research, writing, and analysis course. Like a first, second, or third year associate, you will be expected to take initiative with respect to your projects and in class meetings and Adjunct Instructor conferences. While the projects are fewer in number this year, they are more complex in nature. Remember to pace yourself and your projects. You may need to review your study and work habits for this advanced LRWA course.

Another major difference between the first and second year programs is that there are no “large group” lectures in the second year. This year, you only meet with your Adjunct Instructor in a small group setting. Class times and locations vary greatly this year between sections. Remember to refer to your syllabus often and check your Adjunct Instructor’s forum on TWEN daily. Classes generally meet for two hours.

Finally, Appellate Writing is a legal skills class. You must demonstrate effective, professional advocacy skills for the benefit of both your client and yourself. During the semester, you may find it necessary to advocate a position with which you do not personally agree. All students are expected to act in a professional manner and to make an effective, well reasoned argument on behalf of your respective client.

### **III. BREAKDOWN OF COURSE PROJECTS**

During the next few months you will prepare five written Appellate Projects and participate in an in-class appellate argument. All projects this semester are graded on a 1 to 6 scale, with 6 being the highest grade a student can achieve. A “Grading Guide” generally describing this scale is posted on TWEN for your review. When your Adjunct returns graded papers, he or she will post on TWEN the high, low, and median grade for that particular project in your individual section. Please notify Professor Keith if you are not receiving this information for your projects. The final grades in Appellate Writing are curved within each section.

Your final grade for the semester will consist of the following projects and allocations:

Appellate Project 1 – Statement of the Issues	5%
Appellate Project 2 – Statement of Facts	5%
Appellate Project 3 – Brief in Support of Appellant	30%
Appellate Project 4 – Oral Arguments*	10%
Appellate Project 5 – Brief in Support of Appellee	40%
Class Participation**	10%

\* Oral Argument – Students shall participate in an oral argument for the United States v. Loman case in class. Legal practitioners, selected by your Adjunct Instructor, will serve as judges. There will be a GMU Moot Court Upper Class Competition (UCC) based on this Appellate Writing problem on Saturday, November 10, 2007.<sup>1</sup> Students are encouraged, but not required, to participate in the UCC.

\*\* Class Participation (10%) - Class participation will be evaluated using a variety of factors that include, but are not limited to, in-class participation, interaction with other students, preparation for and participation in individual conferences (including Research Conferences with your partner), and personal interaction and communications with the Adjunct Instructor.

#### IV. GENERAL ADMINISTRATIVE NOTES

Blind Grading: Appellate Writing will employ the same three-digit blind grading scheme used during first-year LRWA courses. Your name should never appear on a project. You should place your three-digit blind grading number where you would normally list the name of counsel, or as specifically directed by counsel.

Project Due Dates: Please pay attention to the syllabus and the due dates. This semester, **Project 1** has a “rolling due date,” meaning that the project is due by electronic submission on the day and at the start time of your regularly scheduled class meeting. **Projects 2 and 5** are due by electronic submission at 6:00pm on the specified dates. **Project 3** is due by electronic submission at 12 noon on the specified dates. **Project 4** are the oral arguments, which will be held during the regularly scheduled class period or as specially arranged by your Adjunct Instructor.

Electronic Submission: Projects must be electronically submitted. To electronically submit a project, go to <http://www.law.gmu.edu/academics/lrwa> and follow the instructions provided. Your Adjunct may also require the submission of hard copies; please follow your Adjunct’s instructions in this regard.

Extensions of Time: Adjunct Instructors do not have the authority to grant extensions of time. You may only request an extension of time to hand in a project from the Assistant Director or Director of the LRWA program. Absent unforeseen circumstances, extensions of time must be requested in writing at least **48 hours** prior to the due date and time of the upcoming Project. Requests received after the project is due will be denied.

LRWA Rules: It is important that you follow the rules for the LRWA program, which are posted on TWEN.

Collaboration: This semester, students will be allowed to collaborate in pairs at specific times during the course. Student pairings will be determined by your

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<sup>1</sup> The final round of the UCC is currently scheduled for Friday, November 16, 2007, at the United States Court of Appeals for the District of Columbia Circuit. Please check TWEN for details regarding the time and courtroom location for this final round as the date approaches.

Adjunct Instructor and will continue for the remainder of the semester. Your collaboration partner will also be your oral argument partner for Project 4. Students will be allowed to collaborate only with their partner and only within their section of Appellate Writing. No outside collaboration between students of different sections or other individuals with legal training will be permitted. Students may discuss research techniques, cases and precedent, and how the law applies to the facts of the case. However, all written work must be your own and each student is solely responsible for completing each written project. Students may not review other students' written work for substantive content, nor may they edit or proofread other students' work in this course.

Plagiarism:

The LRWA Rules explain the requirements for attributing sources. In short, whenever you reproduce the precise wording of a case or a secondary source, you must attribute the source and use proper quotation marks. Often, a more sophisticated and effective technique is to paraphrase a court's holding or a secondary source (instead of incorporating large block quotation) and provide proper attribution. Changing one or two words in a sentence, but retaining the general idea or information conveyed by the source, does not eliminate the need to provide quotation marks and an attribution. If you copy the ideas of another person, you must also provide attribution, even if the idea is not copied verbatim. It is not unusual to be concerned or confused about proper attribution or quotation form. If you have any questions about plagiarism at any time, please speak with your Adjunct Instructor, the Assistant Director or the Director of the LRWA Program.

Use of Materials:

Any project you submit to your Adjunct Instructor may be used as a teaching tool for discussion with the entire class. Any identifying information will be removed to protect student's confidentiality.

Questions/Concerns:

Please feel free to speak with your Adjunct Instructor, the Assistant Director or the Director regarding any questions or concerns you may have during this course or the school year. We want everyone to have a very positive learning experience this semester, and we are always open to ideas for improving the LRWA program.

## V. PROJECT OVERVIEW

### Appellate Project 1 (5%) – Statement of the Issues

Students shall turn in a Statement of the Issues to use in their Brief in Support of Appellant in the United States v. Loman case.

### Appellate Project 2 (5%) – Statement of Facts

Students should submit a Statement of Facts to use in their Brief in Support of Appellant in the United States v. Loman case.

### Appellate Project 3 (30%) – Brief in Support of Appellant

Students will submit a Brief in Support of Appellant in two installments. By the deadline, students must submit the substantive portions of the brief, which are the Statement of Jurisdiction, Statement of the Case, Statement of Facts, Statement of the Issues, Summary of the Argument, Argument (including applicable Standard(s) of Review), and the Conclusion. Within 24 hours of the substantive deadline, students must submit the technical portions of the brief, which are the Cover Page, Table of Contents, Table of Authorities, Request for Oral Argument, Certificate of Service, and Certificate of Compliance (if necessary).

***Students should follow the Federal Rules of Appellate Procedure, as modified by the Local Rules of the Fourteenth Circuit, for organization, content, and format, including margins, typeface, and length restrictions for their brief.***

### Appellate Project 4 (10%) – In-Class Oral Arguments

### Appellate Project 5 (40%) – Brief in Support of Appellee

Students will submit a final and complete Brief in Support of Appellee. The final brief must include: Cover Page, Table of Contents, Table of Authorities, Statement of Jurisdiction, Statement of the Case, Statement of Facts, Statement of the Issues, Summary of the Argument, Argument (including applicable Standard(s) of Review), Conclusion, Request for Oral Argument, and a Certificate of Service. ***Students should follow the Federal Rules of Appellate Procedure, as modified by the Local Rules of the Fourteenth Circuit, for organization, content, and format, including margins, typeface, and length restrictions for their brief.***

**APPELLATE WRITING Meeting Schedule & Assignments – Fall Semester 2007**

<b>Class Sessions &amp; Other Dates</b>	<b>Class Meeting As Group</b>	<b>Class Topics</b>	<b>Reading Assignment</b>	<b>Assignment for Class</b>	<b>Weight</b>
Aug. 22, 23, 24, 25	Yes	<u>Introduction to LRWA III</u> <ul style="list-style-type: none"> <li>• Course Overview</li> <li>• The appellate lawyer vs. the trial lawyer</li> <li>• Appellate practice generally</li> <li>• Purpose of appellate briefs</li> <li>• Preserving Issues on Appeal and the Standard of Review</li> <li>• Authority of the appellate court</li> <li>• Federal Rules of Appellate Procedure (FRAP) and Local Rules of the Fourth Circuit</li> </ul>	<ul style="list-style-type: none"> <li>• Course Syllabus, Adjunct Welcome Memo &amp; LRWA Rules</li> <li>• Sample appellate briefs posted on TWEN (as directed by Adjunct)</li> <li>• <u>Aldisert</u>: Chpts. 1, 2, 5 &amp; App. A</li> <li>• Selection from <u>A Practical Guide to Appellate Advocacy</u> by Mary Beth Beazley on “Appellate Standards of Review” (posted on TWEN)</li> </ul>		
Aug. 29, 30, 31, Sept. 1	Yes; One hour lecture; one hour library training	<u>Getting Started</u> <ul style="list-style-type: none"> <li>• Choosing the issues on appeal</li> <li>• Drafting Statement of the Issues</li> <li>• Developing a research strategy – effective use of authorities</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Aldisert</u>: Chpts. 7, 9, 10 &amp; App. B</li> <li>• Federal Rules of Appellate Procedure and Local Rules of the 4th Circuit (Rules 28-34 in particular) (posted on TWEN)</li> <li>• Trial Record in <u>United States v. Loman</u>.</li> </ul>	Review Case Record & Court Order in <u>United States v. Loman</u> .	
Sept. 5, 6, 7, 8	Yes	<u>Establishing Jurisdiction &amp; Factual Background</u> <ul style="list-style-type: none"> <li>• Statement of Jurisdiction</li> <li>• Statement of the Case</li> <li>• Statement of Facts</li> <li>• Persuasive writing – Part I</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Aldisert</u>: Chpts. 4, 11, 12 &amp; App. C</li> </ul>	Submit <b>Appellate Project 1: Statement of the Issues</b>  <b>Electronic submission of Appellate Project 1 due on the day and at the start time of your regularly scheduled class.<sup>2</sup></b>	5%
Sept. 12, 13, 14, 15	Yes	<u>The Argument – Part I</u> <ul style="list-style-type: none"> <li>• Drafting the Argument</li> <li>• Developing a “theme”</li> <li>• Persuasive writing – Part II</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Aldisert</u>: Chpts. 8, 14, 15 (pp. 199-212)</li> </ul>		

<sup>2</sup> For instance, if your class meets at 8:00 a.m. on Wednesday mornings, then your project would be due at 8:00 a.m. Wednesday morning; if your class meets at 6:00 p.m. on Friday evenings, then your project would be due at 6:00 p.m. on Friday.

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<b>Class Sessions &amp; Other Dates</b>	<b>Class Meeting As Group</b>	<b>Class Topics</b>	<b>Reading Assignment</b>	<b>Assignment for Class</b>	<b>Weight</b>
Sept. 15	<b>Due Date</b>			Submit <b>Appellate Project 2: Statement of Facts</b>  <b>Electronic submission of Appellate Project 2 due by 6:00pm on this date for all students.</b>	5%
Sept. 19, 20, 21, 22	Yes	<u>The Argument – Part II</u> <ul style="list-style-type: none"> <li>Drafting effective and logical point headings to support your conclusion</li> <li>Perfecting your argument</li> <li>Preparing the Summary of the Argument</li> <li>Avoiding logical “fallacies” in arguments</li> </ul> <u>Conclusion</u> <ul style="list-style-type: none"> <li>Form and purpose</li> </ul>	<ul style="list-style-type: none"> <li><u>Aldisert</u>: Chpts. 13, 15 (pp. 212-17), 16, 17 &amp; App. D.</li> </ul>		
Sept. 26, 27, 28, 29	No; Research Conferences	<u>No Class Meeting</u> Students attend <b>mandatory</b> individual research conferences with Adjunct regarding Project 3.		Students should bring a research trail and argument outline with them to the research conference and be prepared to discuss the Appellant’s arguments.	
Oct. 3, 4, 5, 6	Yes	<u>Finalizing the Appellant’s Brief</u> <ul style="list-style-type: none"> <li>Requirements for appellate briefs (cover page, TOC, TOA, COS, COC)</li> <li>Appellate brief writing advice</li> <li>Brief writing checklist</li> <li>Edit, Edit, Edit</li> </ul>	<u>Aldisert</u> : Chpts. 6, 19 (pp. 257-66), 21 (pp. 281-95), 25 (pp. 385-90)		

**APPELLATE WRITING Meeting Schedule & Assignments – Fall Semester 2007**

<b>Class Sessions &amp; Other Dates</b>	<b>Class Meeting As Group</b>	<b>Class Topics</b>	<b>Reading Assignment</b>	<b>Assignment for Class</b>	<b>Weight</b>
Oct. 9	<b>Due Date</b>			Submit <b>Appellate Project 3 (substantive portions)</b> : Brief in Support of Appellant.  <b>Electronic submission for Appellate Project 3 (substantive portions) due by 12 noon on this date from all students.</b> <sup>3</sup>	25%
Oct. 10	<b>Due Date</b>			Submit <b>Appellate Project 3 (technical portions)</b> : Brief in Support of Appellant.  <b>Electronic submission for Appellate Project 3 (technical portions) due by 12 noon on this date from all students.</b>	5%
Oct. 10, 11, 12, 13	Yes	<u>The Appellee’s Brief and Reply Brief</u> <ul style="list-style-type: none"> <li>• The Appellee’s Brief and Reply Brief – purpose and drafting considerations</li> <li>• Discussion of the Target Brief</li> <li>• Brief writing checklist</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Aldisert</u>: Chpts. 19 (pp. 266-71), 20, 25 (pp. 391-92)</li> </ul>		
Oct. 17, 18, 19, 20	No; Research Conferences	<u>No Class Meeting</u> Students attend <b>mandatory</b> individual research conferences with Adjunct regarding Project 6.		Students should bring a research trail and argument outline with them to the research conference and be prepared to discuss the Appellee’s arguments.	
Oct. 24, 25, 26, 27	Yes	<u>Oral Advocacy</u> <ul style="list-style-type: none"> <li>• The purpose of oral advocacy</li> <li>• Preparing for and delivering oral argument</li> <li>• In-class review of arguments in <u>United States v. Loman</u>.</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Aldisert</u>: Chpts. 3, 22, 24 &amp; 25 (pp. 393-96)</li> </ul>		

<sup>3</sup> Please see the Course Overview for more detailed instructions regarding Project 3. *Note: No late submissions of Appellate Project 3 (substantive portions) will be accepted past 4:00pm on this date due to posting of Appellant’s Target Brief.*

**APPELLATE WRITING Meeting Schedule & Assignments – Fall Semester 2007**

<b>Class Sessions &amp; Other Dates</b>	<b>Class Meeting As Group</b>	<b>Class Topics</b>	<b>Reading Assignment</b>	<b>Assignment for Class</b>	<b>Weight</b>
Oct. 31, Nov. 1, 2, 3	No; Conferences	<u>No Class Meeting</u> Students attend <b>mandatory</b> individual conferences with Adjunct regarding Appellate Projects 3 and 5.		Students should thoroughly review their grade and comments on Appellate Project 3 prior to the conferences. Students may bring in an outline of their Brief in Support of Appellee to discuss with their Adjunct.	
Nov. 7, 8, 9, 10	Yes	<u>In-Class Oral Arguments</u> Students should come to class in appropriate courtroom attire		<b>Appellate Project 4:</b> Appellate oral arguments held during class. Schedule and location to be determined by Adjunct Instructor.	10%
Nov. 14, 15, 16, 17	Yes	<u>Final Class Meeting</u> <ul style="list-style-type: none"> <li>• Students are encouraged to bring questions regarding Appellate Project 5 to class for discussion</li> <li>• Editing techniques and general comments on Appellant's Brief (Appellate Project 3)</li> <li>• Discussion of Oral Arguments</li> <li>• Complete Course &amp; LRWA evaluations</li> </ul> <p><i>Students are strongly encouraged to attend the Final Round UCC Competition on Friday, November 16<sup>th</sup> (details on TWEN).</i></p>	None.		
Nov. 21, 22, 23, 24	No	<u>No Class Meeting – Happy Thanksgiving!</u>			
<b>Nov. 27</b>	<b>Due Date</b>			Submit <b>Appellate Project 5:</b> Brief in Support of Appellee.  <b>Electronic Submission of Appellate Project 5 due by 6:00pm on this date for all students.</b>	40%

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<b>Class Sessions &amp; Other Dates</b>	<b>Class Meeting As Group</b>	<b>Class Topics</b>	<b>Reading Assignment</b>	<b>Assignment for Class</b>	<b>Weight</b>
Nov. 28, 29, 30, Dec. 1	No	<u>No Class Meeting – Good luck on your final exams!</u>			