

# Appellate Writing – LRWA III (Law 098) Fall 2009

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## I. Course Information

Instructor: This course is taught by adjunct instructors. 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 either

Kari Sanderson  
Assistant Director of Legal Research, Writing & Analysis  
Truland Building #222  
ksander5@gmu.edu, (703) 993-9158, or

Suzette Hurley  
Director of Legal Research, Writing & Analysis  
Truland Building #224  
shurley2@gmu.edu, (703) 993-9679

### Required Texts:

1. Mary Beth Beazley, A Practical Guide to Appellate Advocacy (Aspen Publishers, 2d ed. 2006)
2. Harvard Law Review, The Bluebook: Uniform System of Citation (Harvard Law Review Association, 18th ed. 2005) (“The Bluebook”).

### 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, 5th ed. 2005).

## II. Introduction

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

This semester you will continue to refine 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 legal 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 our law school 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, class meetings, and individual 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 LRWA program 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; additionally, more than one section may meet on a particular date and time.*** Please check Patriot Web and TWEN to ensure that you attend the correct section of Appellate Writing for which you registered. 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 oral 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 instructor returns graded papers, he or she will provide the high, low, and median grades for that particular project in

your section. Please notify Kari Sanderson if you are not receiving this information on each of 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 - Draft Statement of the Issues                   | 5%  |
| Appellate Project 2 - Draft Statement of Facts, Statement of the Case | 10% |
| Appellate Project 3 – Draft Appellant’s Argument                      | 10% |
| Appellate Project 4 – Brief in Support of Appellant                   | 25% |
| Appellate Project 5 – Oral Arguments*                                 | 10% |
| Appellate Project 6 –Brief in Support of Appellee                     | 30% |
| Class Participation**   | 10% |

\* Oral Argument – Students must participate in an oral argument on the Appellate Writing problem in class. Two or three local practitioners, selected by your adjunct instructor, will serve as judges. Also, there will be a GMU Moot Court Upper Class Competition (UCC) based on this Appellate Writing problem. Preliminary rounds will be held on Saturday, November 14, 2009 and the advancing rounds and final round will be held on Saturday, November 21, 2009.<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, and personal interaction and communications with the adjunct instructor.

#### **IV. General Administrative Notes**

Blind Grading: Appellate Writing will employ a blind grading scheme. Four-digit numbers for all projects will be selected during the second class session. Your name should never appear on a project. In submitting projects, you should place your blind grading number where you would normally list the name of counsel, or as specifically directed by your adjunct instructor.

Electronic Submission: Projects must be submitted electronically via the electronic submission link. To electronically submit your project go to <http://www.law.gmu.edu/academics/lrwa> and follow the instructions provided. Your adjunct instructor may also require the submission of hard copies; please follow your adjunct’s instructions in this regard. **Please note that there may be a time delay in submitting your project using the electronic**

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<sup>1</sup> Please check TWEN for details regarding the time and location for the final round as the date approaches.

**submission link, depending upon student demand of the system's server at the time you submit.** This demand is greatest within the last ten minutes of a deadline. Thus, to ensure timely submission of your project, you should begin to submit the project at least fifteen minutes before the deadline. You assume the risk of late penalties by waiting to submit a project until the final minutes before a deadline. You should also send a copy of each project to yourself to check the submission time of your projects. **The running clock on the electronic submission page is the clock used to determine timeliness of submission.**

- 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 may collaborate with one another within the parameters established in the LRWA Rules. Collaboration is optional and allowed only as provided in the LRWA Rules. No outside collaboration between students and individuals with legal training will be permitted. Students may discuss research techniques, facts of the case, the Record, cases and precedent, and how the law applies to the facts of the case. However, each student is expected to research all issues. Students may not divide the research for the briefs. Students are not permitted to share written work product; each student is solely responsible for completing each written project throughout the semester. Students may not review another student's 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 or court, 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 the course of the semester. 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%) –Draft Statement of the Issues**

Students shall turn in a draft Statement of the Issues to use in their Brief in Support of Appellant in the *United States v. Wynett* (“*Wynett*”) case.

**Due: Monday, August 31, 2009, at 10:00pm**

### **Appellate Project 2 (10%) – Draft Statement of Facts, Statement of the Case**

Students shall turn in a draft Statement of Facts and Statement of the Case to use in their Brief in Support of Appellant in the *Wynett* case.

**Due: Monday, September 14, 2009, at 10:00pm**

### **Appellate Project 3 (10%) – Draft Appellant’s Argument**

Students should submit a draft Argument section to use in their Brief in Support of Appellant in the *Wynett* case. This draft should be as complete as possible, including point headings, appropriate authority, and accurate case citations.

**Due: Tuesday, September 29, 2009, at 10:00pm**

### **Appellate Project 4 (25%) – Brief in Support of Appellant**

Students will submit a final and complete Brief in Support of Appellant. This final brief must include: a Cover Page, Table of Contents, Table of Authorities, Statement of Jurisdiction, Statement of Issues, Statement of the Case, Statement of Facts, Summary of the Argument, Argument (including applicable Standard(s) of Review), Conclusion, 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 for the 4th Circuit Court***

*of Appeals, for organization, content, and format, including margins, typeface, and length restrictions for their brief.*

**Due:** Monday, October 26, 2009, at 10:00pm

**Appellate Project 5 (10%) – In-Class Oral Arguments**

**Held:** November 4, 5, and 6, 2009 (during class)

**Appellate Project 6 (30%) – Brief in Support of Appellee**

Students will submit a final and complete Brief in Support of Appellee. The final brief must include: a Cover Page, Table of Contents, Table of Authorities, Statement of Jurisdiction, Statement of the Issues, Statement of the Case, Statement of Facts, Summary of the Argument, Argument (including applicable Standard(s) of Review), Conclusion, 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 for the 4th Circuit Court of Appeals, for organization, content, and format, including margins, typeface, and length restrictions for their brief.*

**Due:** Wednesday, December 2, 2009, at 10:00pm

## VI. Appellate Writing Section Information

| Section            | Day       | Time               | Room | Room - first session * | Adjunct Instructor |
|--------------------|-----------|--------------------|------|------------------------|--------------------|
| 098-001<br>(77494) | Wednesday | 8:00 - 9:50 a.m.   | 412  | 224                    | Andy Bramnick      |
| 098-002<br>(77495) | Wednesday | 10:00 - 11:50 a.m. | 412  | 224                    | Kari Sanderson     |
| 098-003<br>(77776) | Wednesday | 10:00 - 11:50 a.m. | 348  | 348                    | Lisa Sockett       |
| 098-004<br>(77501) | Wednesday | 12:00 - 1:50 p.m.  | 412  | 412                    | Barbie Nagata      |
| 098-010<br>(77598) | Wednesday | 6:00 - 7:50 p.m.   | 412  | 224                    | Tom Segal          |
| 098-011<br>(77599) | Wednesday | 8:00 - 9:50 p.m.   | 412  | 412                    | Jon Frieden        |
| 098-005<br>(77502) | Thursday  | 8:00 - 9:50 a.m.   | 412  | same                   | Dennis Southard    |
| 098-006<br>(77503) | Thursday  | 10:00 - 11:50 a.m. | 224  | same                   | Lynn Zehrt         |
| 098-007<br>(77504) | Thursday  | 12:00 - 1:50 p.m.  | 348  | same                   | Karen Fernandes    |
| 098-013<br>(77601) | Thursday  | 6:00 - 7:50 p.m.   | 348  | same                   | Janet Gongola      |
| 098-014<br>(77602) | Thursday  | 8:00 - 9:50 p.m.   | 348  | same                   | Suyong Min         |
| 098-012<br>(77600) | Thursday  | 8:00 - 9:50 p.m.   | 412  | same                   | Kevin Sheahan      |
| 098-008<br>(77505) | Friday    | 8:00 - 9:50 a.m.   | 412  | same                   | Kate McSweeny      |

|                    |        |                    |     |      |                          |
|--------------------|--------|--------------------|-----|------|--------------------------|
| 098-009<br>(77506) | Friday | 10:00 - 11:50 a.m. | 412 | same | Hillary Hoffman-<br>Peak |
| 098-015<br>(77603) | Friday | 6:00 - 7:50 p.m.   | 412 | same | David Lord               |

\*The first session for all sections usually meeting on Wednesday will be held on Friday, August 21, 2009 at the regularly scheduled time in the room indicated.

**APPELLATE WRITING Class Schedule, Projects & Assignments – Fall Semester 2009**

| Class Sessions & Other Dates  | Event         | Class Topics   | Reading Assignment   | Assignment for Class / Project Submission or Return   | Weight |
|---|---------------|--|--|---|--------|
| Aug. 20, 21<br>[NOTE: Students in Wed. classes will meet on Fri, Aug. 21 this week only. Check TWEN for room assignments] | Class Meeting | <u>Introduction to Appellate Writing</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>• Authority of the appellate court</li> <li>• Purpose of and audience for appellate briefs</li> <li>• Federal Rules of Appellate Procedure (FRAP) &amp; 4th Circuit Local Rules</li> <li>• The Record:                             <ul style="list-style-type: none"> <li>Preserving issues on appeal</li> <li>Joint Appendix</li> <li>Creating an Abstract</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Course Syllabus &amp; LRWA Rules</li> <li>• Beazley: Chpts. 1, 2, 3.1</li> <li>• Aldisert excerpt - Issue Preservation for Review (posted on TWEN)</li> <li>• Review Federal Rules of Appellate Procedure and Local Rules of the 4th Circuit (Rules 28-34 in particular) (link posted on TWEN)</li> </ul> | Review your adjunct's TWEN page for additional readings, assignments or instructions.<br><br><b>A list showing the adjunct and classroom for each section is available on TWEN.</b>                 |        |
| Aug. 26, 27, 28   | Class Meeting | <u>Library Session I</u><br>Developing a research strategy – effective use of authorities<br><br><u>Getting Started</u> <ul style="list-style-type: none"> <li>• Standard of review</li> <li>• Choosing the issues on appeal</li> <li>• Drafting the Statement of Issues</li> <li>• Mandatory and persuasive authority</li> <li>• <b>BGNs for entire Semester will be selected during class</b></li> </ul>   | <ul style="list-style-type: none"> <li>• Beazley: Chpts. 3.2-3.5, 9.1</li> <li>• Record in <i>United States v. Wynett</i></li> </ul>   | Review Appellate Record in <i>United States v. Wynett</i> , posted on TWEN  |        |
| Mon., Aug. 31   | Due Date      |  |  | <b>Submit Appellate Project 1: Draft Statement of Issues for Brief in Support of Appellant</b><br><br>Electronic submission of Appellate Project 1 due by 10:00 p.m. on this date for all students. | 5%     |

**APPELLATE WRITING Class Schedule, Projects & Assignments – Fall Semester 2009**

| <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. 2, 3, 4                           | Class Meeting                 | <u>Establishing Jurisdiction &amp; Factual Background</u> <ul style="list-style-type: none"> <li>• Issues on Appeal in <i>United States v. Wynett</i></li> <li>• Statement of Jurisdiction, Statement of the Case and Statement of Facts</li> <li>• Review transition from rule proofing to persuasive writing</li> <li>• Persuasive writing – Part I</li> </ul> | <ul style="list-style-type: none"> <li>• Beazley: Chpts. 4, 8.4.7, 9.2, 11.1-11.4</li> </ul> |   |               |
| Sept. 9, 10, 11                         | Class Meeting                 | <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>• Beazley: 5, 6</li> </ul>                            |   |               |
| <b>Mon., Sept. 14</b>                   | <b>Due Date</b>               |  |  | <b>Submit Appellate Project 2: Draft Statement of the Case, Statement of Facts for Brief in Support of Appellant</b><br><br>Electronic submission of Appellate Project 2 due by 10:00 p.m. on this date for all students. | 10%           |
| Mon., Sept 14                           | Return Date                   |  |  | Project 1 returned on this date by 10:00 p.m.   |               |
| Sept. 16, 17, 18                        | Class Meeting                 | <u>Library Session II</u><br>Researching public policy and legislative materials<br><br><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> </ul>   | <ul style="list-style-type: none"> <li>• Beazley: 7, 9.4, 10, 11.5-11.7</li> </ul>           |   |               |
| Sept. 23, 24, 25                        |                               | <u>No Class Meeting</u>  | <ul style="list-style-type: none"> <li>• None.</li> </ul>                                    | Students should work on Project 3 – Draft Argument for Brief of Appellant   |               |

**APPELLATE WRITING Class Schedule, Projects & Assignments – Fall Semester 2009**

| Class Sessions & Other Dates | Class Meeting As Group | Class Topics   | Reading Assignment   | Assignment for Class   | Weight |
|------------------------------|------------------------|--|--|--|--------|
| Tue., Sept 29                | Due Date               |  |  | <b>Submit Appellate Project 3: Draft Argument for Brief in Support of Appellant</b><br><br>Electronic submission of Appellate Project 3 due by 10:00 p.m. on this date for all students. | 10%    |
| Tue., Sept 29                | Return Date            |  |  | Project 2 returned on this date by 10:00 p.m.  |        |
| Sept. 30<br>Oct. 1, 2        | Class Meeting          | <u>Finalizing the Appellant's Brief</u> <ul style="list-style-type: none"> <li>Preparing the Summary of the Argument</li> <li>Avoiding logical "fallacies" in arguments</li> <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> <li>Conclusion - form and purpose</li> </ul> | <ul style="list-style-type: none"> <li>Beazley: 8, 9.3, 12, Appendix A</li> <li>Review FRAP Rules 28, 28.1, 31 and 32 and associated 4<sup>th</sup> Circuit Local Rules</li> </ul> |  |        |
| Oct. 7, 8, 9                 | Class Meeting          | <u>Oral Advocacy – Part I</u> <ul style="list-style-type: none"> <li>The purpose of oral advocacy</li> <li>Preparing for oral argument</li> </ul>  | <ul style="list-style-type: none"> <li><u>Beazley 13, 14</u></li> </ul>  |  |        |
| Mon., Oct. 12                | Return Date            |  |  | Project 3 returned on this date by 10:00 p.m.  |        |
| Oct. 14, 15, 16              | Individual Meetings    | <u>No Class Meeting</u><br>Students attend <b>mandatory</b> individual conferences with adjunct instructor regarding Projects 1, 2 and 3.  |  | Students should bring questions related to Projects 1, 2 and 3 with them to the individual conferences. Students may also ask any questions related to Project 4 during the conferences. |        |

**APPELLATE WRITING Class Schedule, Projects & Assignments – Fall Semester 2009**

| <b>Class Sessions &amp; Other Dates</b> | <b>Event</b>     | <b>Class Topics</b>   | <b>Reading Assignment</b>  | <b>Assignment for Class</b>   | <b>Weight</b> |
|---|------------------|---|--|---|---------------|
| Oct. 21, 22, 23                         | Class Meeting    | Oral Advocacy – Part II <ul style="list-style-type: none"> <li>Delivering oral argument</li> <li>In-class review of arguments in <i>United States v. Wynett</i></li> </ul>  | <ul style="list-style-type: none"> <li>None.</li> </ul>  |   |               |
| <b>Mon., Oct. 26</b>                    | <b>Due Date</b>  |   |  | <b>Submit Appellate Project 4: Brief in Support of Appellant</b><br><br>Electronic submission of Appellate Project 4 due by 10:00 p.m. on this date for all students.<br><br><u><b>Any Project 4 not received on or before 8:00 a.m. on Wednesday, October 28 will receive a grade of zero.</b></u> | 25%           |
| Weds., Oct. 28                          | Release Date     |   |  | Target brief for Appellate Project 6: Brief in Support of Appellee posted on TWEN   |               |
| Oct. 28, 29, 30                         | Class Meeting    | <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>Barbara A. Lukeman, <u>The Ins and Outs of the Appeal Brief</u>, 36992 Nat’l Bus. Inst. 51 (2007). Posted on TWEN.</li> </ul> |   |               |
| <b>Nov. 4, 5, 6</b>                     | <b>Project 5</b> | <u><b>In-Class Oral Arguments</b></u><br><b>Students should come to class in appropriate courtroom attire</b>   |  | <b>Appellate Project 5: Appellate oral arguments held during class or as scheduled by your adjunct instructor. Argument schedule and location to be determined by adjunct instructor.</b>   | 10%           |

**APPELLATE WRITING Class Schedule, Projects & Assignments – Fall Semester 2009**

| <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. 11, 12, 13                         | Class Meeting                 | <u>Final Class Meeting</u> <ul style="list-style-type: none"> <li>• Students encouraged to bring questions re: Appellate Project 6 to class for discussion</li> <li>• Editing techniques and general comments on Appellant’s Brief (Appellate Project 4)</li> <li>• Discussion of oral arguments</li> <li>• Complete course &amp; LRWA evaluations</li> </ul> | <ul style="list-style-type: none"> <li>• None.</li> </ul> |  |               |
| Mon., Nov. 16                           | Return Date                   |   |   | Project 4 returned on this date by 10:00 p.m.  |               |
| Nov. 18, 19, 20                         | Individual Meetings           | <u>No Class Meeting</u><br>Students attend mandatory individual conferences with adjunct instructor regarding Project 4.  | <ul style="list-style-type: none"> <li>• None.</li> </ul> | Students should bring questions related to Project 4 with them to the individual conferences. Students may also ask any questions related to Project 6 during the conferences. |               |
| Nov. 21                                 |                               | Students are strongly encouraged to attend the Final Round UCC Competition (details posted on TWEN).  |   |  |               |
| Nov. 25, 26, 27                         |                               | <u>No Class Meeting – Happy Thanksgiving!</u>   | <ul style="list-style-type: none"> <li>• None.</li> </ul> | Students should work on Appellate Project 6 – Brief of Appellee  |               |
| <b>Wed., Dec. 2</b>                     | <b>Due Date</b>               |   |   | <b>Submit Appellate Project 6: Brief in Support of Appellee.</b><br><br>Electronic Submission of Appellate Project 6 due by 10:00 p.m. on this date for all students.          | 30%           |