

Mason Arts and Entertainment Advocacy Clinic Fall 2024

Tuesdays 1:50-3:50pm in person;
additional zoom session TBD

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Office hours: directly before or after class, or as scheduled per our mutual convenience. I am happy to meet via zoom to accommodate schedules.

Learning Outcomes and Grades

In this course you will apply the legal knowledge and analytical skills you have acquired in law school to advocate on behalf of artists and other authors, non profits and small businesses in the creative sector.

Our work will challenge you to demonstrate creative problem-solving, and think beyond the law (remember that we are human beings first) when interacting with clients. You will learn to counsel your clients in a fashion that is not only legally sound, but practical to their circumstances.

Because you will be representing actual clients facing real-world legal challenges, with real consequences, you will gain firsthand experience practicing law professionally and according to the ethical norms expected of members of the legal profession.

Based on the workload we have lined up so far, at a minimum, you will:

- Learn how to interview clients, analyze their legal concerns and counsel them verbally and in writing by planning and conducting drop-in workshops and by working with me and volunteer mentors to represent clients seeking copyright advice referred to us by Washington Area Lawyers for the Arts;
- Practice your client counseling, interviewing, legal research and presentation skills by representing clients filing an amicus brief in an important copyright case in a federal appeals court;
- Provide legal information, counseling, education and support to BIPOC creators in registering their works at the Copyright Office;
- Represent artists and creators who are clients of a boutique copyright law firm before the recently-launched Copyright Claims Board in the USCO through the CCB field placement if you have registered to do so;

We will have regular in person and zoom meetings, and be joined by guest lecturers so that you may grow your network and experience different perspectives on copyright matters.

You will prepare various types of communications to clients including oral, formal and informal written correspondence. Plans for such communication and counseling will be discussed in class and with professors/mentors outside of class before it is delivered. You will receive input and feedback on your suggested counseling on issues including substance, tone and effective communication. However, the goal is for you to be the main point of contact and the lead

counselor for the client, and to be responsible for thoroughly understanding the client's needs and goals, researching their questions and delivering correct and complete advice. Grades will be based on the final portfolio of written client work you submit at the conclusion of finals week, as well as on effective and consistent class participation and collaboration with other students to ensure all clinic clients are receiving correct and complete advice. Your portfolio will also include a written narrative component to allow you to reflect on your personal development and learning throughout the semester as well as your contributions to the clinic as a whole.

Effective participation requires both active independent and in class engagement with clients, professors/mentors, the materials and with each other. Your grade will be determined by demonstrating thoughtful, consistent engagement with all of the above as indicated by analyzing, researching, drafting, sharing, and commenting on client projects and other class work and discussions throughout the semester. Because this is a class, the expectation is that you will first attempt to identify solutions to address the problem presented, then seek feedback and incorporate comments and build on those comments and experiences over the course of the semester. DO NOT expect your mentors or professors to organize or complete the tasks for you. DO expect us to give you extensive and intensive comments and advice throughout the process —particularly during in class case rounds.

AI Policy

The school has adopted the following AI policy which we enforce in the clinic. Unless the syllabus is updated to reflect specific permissions to use AI resources the prohibitions in effect under the policy apply.

AR 4-3: Limitations on the Use of Generative Artificial Intelligence (GAI) in Academic Work

- (a) Definition: Generative artificial intelligence (GAI) is a type of artificial intelligence that uses algorithms to generate new content, such as text or images, based on the data it has been trained on. For purposes of this regulation, GAI is not intended to encompass legal research databases and word processing applications that, while incorporating AI-based elements or enhancements, do not generate novel text.
- (b) Papers and coursework: The use of GAI in drafting or writing coursework, including papers and reaction papers, is prohibited unless expressly identified in writing by the instructor as an appropriate resource for the work in the instructor's course.
- (c) Examinations: The use of GAI in preparing to write or writing exam answers is prohibited unless expressly identified in writing by the instructor as an appropriate resource for the exam in the instructor's course.
- (d) In no instance are instructors allowed to permit any use of GAI prohibited in (b) or (c) in the Law School's required courses specified in AR 3-3.2(a) (except for LRWA IV). Any midterms or exams in these courses must be given in a closed-internet format.
- (e) Instructors permitting the use of GAI outputs shall specify in writing the course parameters of allowable use and disclosure expectations. Instructors may require students to disclose the GAI outputs relied upon, and further show exactly how and where those outputs were used in the academic work.
- (f) If not expressly identified as permissible in writing by the instructor, any use of GAI will be considered academic dishonesty involving cheating in violation of Section 1.01.1 and/or 1.01.5 of the Honor Code, and violators may be subject to the disciplinary sanctions set forth in Section 3.01 of the Honor Code. Law School instructors and administrators reserve the right to use AI detection software to find instances of GAI in student submissions.

Reading Assignments

We will rely principally on various articles, cases, background materials, filings, bill drafts, regulations, briefs and other working materials as listed in the class schedule below or emailed to you/posted to the asynchronous discussion to prepare for in class discussions.

I recommend you consult the below additional resources as good starting points when you research and answer client questions:

Entertainment Law, Forms and Analysis, Corey Field & Barry Slotnick

This volume is available in the Library in hard copy.

Compendium of US Copyright Office Practices, Third Edition (available on www.copyright.gov). Though written as a resource for U.S. Copyright Office employees primarily on internal registration related practices, this document is a very practical and useful guide to basic issues that come up in counseling clients on a variety of copyright issues.

You may find the following blogs helpful in keeping up to date on newsworthy copyright topics:

www.illusionofmore.com

www.copyrightalliance.org

EMAIL COMMUNICATION: Students must use their MasonLive email account to receive important University information, including communications related to this class. In accordance with University policy the professors will not respond to messages sent from or send messages to a non-Mason email address.

ATTENDANCE: Regular and punctual attendance in person unless alternate accommodations are requested via the Assistant Dean, Student Academic Affairs is required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g. a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs to make appropriate arrangements and notify me. Although we will rely on zoom for many classes in order to connect with clients and outside speakers, unless a class is specifically scheduled as an all zoom class by the Professor (because we are delivering an on-line seminar to outside attendees for instance) attendance by zoom does not count as attendance, even in the case of illness, unless arrangements are made in advance with the Assistant Dean, Student Academic Affairs.

- Additional mandatory zoom only sessions will be scheduled by your mentors. Attendance at those meetings will be tracked by noting whether you were actively participating on line with the camera engaged and pointed at you for the duration of the meeting.

CLASS RECORDINGS PROHIBITED: Pursuant to Academic Regulation 4-2.2, no portion of a class session may be preserved by means of a recording device such as an audio recording device or camera. This is especially important given the nature of our seminar where we will be discussing client confidential matters.

- The instructors/mentors record course sessions conducted via zoom pursuant to school policy. Because so much of the class will depend on active discussion and collaboration, passive listening to classes you have missed will generally not be sufficient to advance your learning in the class. Accordingly, substitute assignments for missed classes are not possible.

PAPER EXTENSIONS: Except for instances described in AR 4-4.1(b)(ii), faculty may not grant deadline extensions for final papers (i.e. Your portfolios); all authority in this matter is delegated to the Assistant Dean, Student Academic Affairs. Excuses and requests for a deadline extension must be presented, with appropriate documentation, to the Assistant Dean, Student Academic Affairs. Except in emergencies, deadline extensions must be sought in advance of the scheduled deadline. Note that there are steep deductions in grades required for every day past the scheduled deadline a paper is turned in. **Portfolios are due before 11:59pm Wed. Dec.13.**

ACADEMIC INTEGRITY: It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

CLASSROOM ACCOMMODATIONS: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <https://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

ADDITIONAL SCHOOL POLICIES AND RESOURCES:

[STUDENT HONOR CODE](#)

[ACADEMIC REGULATIONS](#)

UNIVERSITY LIFE: University Life provides student support resources such as **Counseling and Psychological Services** (<https://caps.gmu.edu/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

Weekly Class Schedule and Assignments

****Due to the nature of client work, client and guest speaker availability and court/agency filing deadlines the order and timing of assignments may change. ****

*******Please provide us with drafts of your work for comments by 10 pm Saturday prior to class in any week when case rounds are planned.** *****

Class 1: Goals of amicus briefing- Analyzing a brief in the wild. How does an amicus brief differ from a party brief? What makes a good brief? What sort of brief should we be aiming to write?

- We will start by talking about why parties invite amicus briefs and what the role of an amicus brief is. Come with your own thoughts on this topic as well as some ideas of what you want to know when we meet with collaborators next week so we can figure out how to structure and organize/prioritize that conversation.

Each student should also come to class with an amicus brief filed in *Andy Warhol Foundation for the Visual Arts v. Goldsmith* and we will dissect it.

- We will discuss why you picked the brief- what made it compelling above other briefs. Working through each brief you have brought to class create our own rubric of what makes a compelling & persuasive brief
- If you come across any briefs that you do not find particularly compelling note that too
- Come to class prepared to tell us your process of selection - were you familiar with the underlying case already? How much of it did you read/re-read before you started reading the briefs? Did you read any outside resources? In what sequence? How did you approach the brief to evaluate it - What did you look at and in what order, etc? Why?
- Think about insights you have to offer from your own writing experiences/editing experiences

Note - I am not expecting you to read all the briefs filed in the case. Only skim/ perhaps just glance through some of them. Part of this exercise also shows us how we select briefs quickly when we can't read everything - what makes certain briefs stand out over others.

Class 2: Learning about the parties' appeal strategy and amicus strategy - where might we fit in. How can we bring a specific perspective to light. This meeting will be scheduled as a meeting with the party whose side we will be writing the brief on their counsel. Read the opinion I circulated last week in preparation for this meeting. You will lead the interview.

Class 3: Internal meeting with Counsel of Record. You will have read the background materials on the case and heard from the appellant by this class.

- Come to class having thought about and researched examples and cases where visual images have been used without authorization in unexpected ways and the results. What are the arguments pro/con to be prepared for. Could visual artists ever find themselves on both sides of this argument - perhaps a graphic artist or an illustrator wanting to adapt a photograph? A photographer wanting to photograph a sculpture? Etc?
- Identify as many usage scenarios as you can come up with and separate them into “buckets” of uses you think should require licenses/permissions or not and why
- What are the counter arguments? If we represent one “bucket” of uses/users who else are we precluded from representing?
- Second issue: look at substantial similarity standards in 2d Circuit and 9th Circuit and be conversant in what they require.
- We will aim to agree on briefing strategy and finalize assignments and timelines.

Class 4: Client interview skills and lawyering techniques/personalities. Discussion and practice amongst ourselves with eliciting factual and legal information from clients and useful contacts. How do you prepare? How do you get someone to open up? How do you get someone to shift gears when the conversation is not productive/off topic? What is your lawyering personality?

Readings: Aaron, Marjorie Corman, "Client Science: Advice for Lawyers on Initial Client Interviews" (2013). https://scholarship.law.uc.edu/fac_pubs/343

Prepare: – Prior to class, write three paragraphs describing the type of counselor you would like to be. Identify a model of client counseling you envision yourself following and describe why.

In preparation for meeting with clients prepare interview questions, we’ll practice in class before meeting the clients.

Class 5: TBD: may try to schedule interview with visual artist groups for this session

Check in on progress of work on brief. Circulate assignments 48 hours in advance for review and comment.

Class 6 – TBD May try to schedule meeting with Judge Michel for this session.

Copyright basics –

Aistars, Sandra Copyright’s Lost Art of Substantial Similarity-
https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/356/2023/11/27231947/Aistars_PDF_FINAL.pdf

Aistars, Sandra Visualizing Copyright Law: Lessons from Conceptual Artists
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4452367

Class 7 – Case Rounds

Class 8- Prep promotional materials for WALA seminar. Come to class with a proposed advertisement for the WALA educational session on our case/applied learnings from our case

for artists that can be used to promote the event on Eventbrite, linked in and on social media platforms. The advertisement should include an original graphic component, all relevant information on time/a spot for zoom information and be accompanied by a short (150 words or less) summary of the event. The graphic should also include the logos for WALA and the clinic. We'll modify and finalize the promotional materials and begin to discuss the substantive presentation.

Class 9- Case Rounds & Prep to file

Class 10- Internal Run Through of WALA program (clinic only)

Class 11- Dry Run of WALA program with WALA participants and outside speakers.

You will be sent a special zoom log in for this session that will work only for this session. Plan to do this session wherever you will do the real seminar so that you can test your setup and equipment and be sure you are comfortable in advance. You will get a different log in for next week.

Class 12 – WALA SEMINAR LIVE. You will receive a new log in for the real WALA zoom seminar. You will be the host and lead the discussion with artists and our guests.

Class 13 – Wrap up Discussion. Continue work with CCB field placement.

CONTENT OF PORTFOLIOS: Your final portfolios shall consist of final copies of every project you worked on in the Clinic, plus a narrative reflecting on your work in the clinic.

Two formats have proven particularly effective in previous years, but you may choose any format you wish as long as the entire portfolio is delivered in one single coherent file.

Example a: Include a short (500-1000 word) essay with each assignment reflecting on the assignment, the leadership role and other contributions particular participants in the Clinic took, the challenges and opportunities each assignment posed (e.g unexpected research hurdles, tight deadlines, sensitive issues, unfamiliar area of the

law, interactions with a client, etc.) and how you/other collaborators overcame them/learned from them noting particular leadership roles participants volunteered for etc.

Example b: Keep notes and impressions of the above issues throughout the semester – perhaps in the form of a journal- and at the end of the semester submit a comprehensive narrative review covering the same general themes as in example a although not necessarily organized on an assignment-by-assignment basis.

Note that these narrative overviews of your reflections on the clinical experience are particularly helpful in our final grading. They allow you to highlight where you (and others) took a special leadership role in the course and made contributions to the clients' benefit, and to the overall success and learning of your colleagues. These documents likewise provide an opportunity to reflect on the strengths and contributions of colleagues and highlight how the group did (or in some cases did not) effectively use each others strengths to provide excellent service to the Clinic's clients.

As a practice note, these narratives may seem similar in concept to the yearly memos that partners write to the managing committees of their firms explaining the strengths/weaknesses and overall contributions of their personal practice to the firm which are used to calculate the compensation each partner will receive from that year's profits. We include them here however for different pedagogical purposes – to encourage you to think thoroughly about each assignment and how you personally approached it both in terms of what you offered the client, your collaborators in the clinic, and what personal/professional and practical learnings you can take away from each experience