

APPELLATE ADVOCACY
Spring 2023

Law 159 (2 credits)

Thursdays, 11:20 a.m.-1:20 p.m.(159-001)

By arrangement (159-002)¹

Adjunct Professors:

Ernie Isenstadt (ernestisenstadt@gmail.com) (001)

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Course Overview & Learning Outcomes

The purpose of this course is to (1) build on the argumentative writing skills you have acquired in LRWA II and III, and (2) focus intensively on the preparation and delivery of appellate oral arguments, in connection with participation in an extramural moot court contest. Taking this course should help you to:

- Explain and apply rules, practices, and expectations of the Supreme Court as they relate to the briefing and argument of cases;
- Work as part of a team to research and brief complex legal issues at the appellate level under tight deadlines; and
- Formulate, practice, and deliver complex oral arguments at the appellate level.

Texts

- Scalia & Garner, *Making Your Case: The Art of Persuading Judges* (2008)
- Garner, Justice Interviews: http://www.thelaw.net/scribes_journal_legal_writing.pdf
- Garner, *The Winning Brief* (2014) (optional text)

Schedule

***Week #1 (1/17 – 1/20/23) — Lecture Class #1: Introduction**

- **Topics:** Rules Governing Preparation of Appellate Briefs: FRAP, U.S. S. Ct. Rules, Moot Court Contest Rules, Pre-Argument Sections of the Brief: Statement of Issues/Questions

¹ These are the days and times included on the official Spring schedule. Each professor will work with their assigned teams to schedule a day and time that works for everyone involved.

*Dates of Lecture Classes 1-3 may be shifted to suit contest schedules. Other times will be used as needed and permitted to discuss contest issues and practice arguments. Some classes may be held in person.

Presented; Statement of the Case and Statement of Facts (discuss FRAP and S.Ct. approaches)

- **Reading:** S.Ct. Rules 24 & 34; *Making Your Case* (pp. 82–97); Justice Interviews (pp. 1–40)

***Week #2 (1/23 – 1/27/23) — Lecture Class #2: The Argument**

- **Topics:** Discussion of Summary of Argument and Argument, writing style, and editing points
- **Reading:** *Making Your Case* (pp. 1–82, 97–137); Justice Interviews (pp. 41–78)

***Weeks #3–4 (1/30 – 2/3/23; 2/6 – 2/10/23) — Individual Team Meetings**

***Week #5 (2/13 – 2/17/23) — Lecture Class #3: Oral Argument Class**

- **Topics:** Discuss oral argument techniques and preparation; view/critique video of moot court arguments
- **Reading:** *Making Your Case* (pp. 137–205); U.S. S. Ct. Guide for Counsel: <https://www.supremecourt.gov/casehand/guideforcounsel.pdf>

Weeks #6–10 (2/20 – 3/31/23) — Individual Team Meetings/Practices

Weeks #11–13 (4/3 – 4/24/23) — Contest Debriefings and Final Assignment Discussion

Assignment Checklist & Grading Rubric

Below are the required components of the course as they relate to computation of each student's final grade. Weights may be altered with prior notice.

1. **Final Contest Brief (40%)** — Barring exceptional circumstances, each member of the team preparing the brief will be assigned the same grade.
2. **Practice Arguments (40%)** — Each student will participate in a minimum of three faculty-judged practice arguments before the contest. In addition, to satisfy this element, each student must arrange at least two other practice sessions before one or more judges (other than teammates) and report the date, time, location and judge(s) for such practices. For students just doing brief writing for their team (if applicable), their grade for the practice arguments will be based on their assistance in developing practice questions and helping the professor moot the students who are arguing.
3. **Critique of Another Team's Brief (10%)** — Each student will be assigned to prepare a critique of another team's brief, utilizing the criteria discussed in class and in the assigned reading. Each student will provide a copy of the completed critique to both the instructor(s) and to the authors of the subject brief.

4. Class Participation (10%) — This includes various non-graded but essential course components, including:

- Participation in prebriefing scheduling meeting; submission of schedule;
- Submission of outline and rough draft of brief per agreed schedule;
- Submission of post-contest evaluation form;
- Participation in scheduled class sessions and completion of assignments; and
- Help with mootings other teams as requested and time allows.

Prerequisite: Students must have completed Law 098 LRWA III Appellate Writing before taking this course.