

## **APPELLATE ADVOCACY Spring 2024**

### **Law 159 (2 credits)**

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

Mondays, 8:10 – 10:10 p.m. (159-002)

### **Professors**

Ernie Isenstadt ([eisensta@gmu.edu](mailto:eisensta@gmu.edu)) (001)

Brandy Wagstaff ([bwagstaf@gmu.edu](mailto:bwagstaf@gmu.edu)) (002)

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### **Course Overview & Learning Outcomes**

This course builds on the persuasive writing skills you developed in LRWA II and LRWA III and focuses intensively on preparing for and delivering appellate oral arguments in your extramural moot court contest. After this course, you should be able to:

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

### **Course Materials**

#### **Required:**

- Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* (2008)
- Bryan A. Garner, *Interviews with United States Supreme Court Justices*, *Scribes J. of L. Writing* (2010), [http://www.thelaw.net/scribes\\_journal\\_legal\\_writing.pdf](http://www.thelaw.net/scribes_journal_legal_writing.pdf)
- Clerk of the Ct., Sup. Ct. of the U.S., *Guide for Counsel in Cases to be Argued Before the Supreme Court of the United States* (2015), <https://www.supremecourt.gov/casehand/guideforcounsel.pdf>

#### **Optional:**

- Bryan A. Garner, *The Winning Brief* (3d ed. 2014)
- Richard Wydick & Amanda Sloan, *Plain English for Lawyers* (6th ed. 2019)

## Course Format

The course is designed to prepare your extramural team for its moot court competition. Consequently, most class meetings will be scheduled individually with your team rather than as a section. Some sessions may also be held via Zoom to accommodate the course starting before the regular semester. **The professors will work with each team to develop an individualized course schedule, regardless of the meeting day and time assigned on the law school's official course schedule.**

## Assignments & Grading

The following chart summarizes the assignments, expectations, and weights that will be used to calculate each student's grade:<sup>1</sup>

Assignment	Weight	Due Date
<b>Class Participation</b> , which includes the following non-graded requirements: <ul style="list-style-type: none"><li>• Participation in a semester planning meeting</li><li>• Submission of a semester team schedule</li><li>• Timely submission of a brief outline</li><li>• Timely submission of a rough draft of the brief</li><li>• Submission of a post-contest evaluation form</li><li>• Participation in scheduled class sessions and completion of assignments</li><li>• Help with mooting other teams as requested and time allows</li></ul>	10%	Various
<b>Final Contest Brief</b> <ul style="list-style-type: none"><li>• Barring exceptional circumstances, each member of the team will be assigned the same grade.</li></ul>	40%	Based on competition schedule
<b>Oral Argument</b> <sup>2</sup> <ul style="list-style-type: none"><li>• You must participate in a <b>minimum of 3 faculty-judged practice arguments</b> before your contest.</li><li>• Additionally, you must arrange <b>at least 2 additional practice sessions</b> before one or more judges (other than teammates) and report the date, time, location, and judge(s) for the practices.</li></ul>	40%	Based on competition schedule

<sup>1</sup> Assignment weights may be changed without advance notice.

<sup>2</sup> For students who are only writing their team's brief (if applicable), your grade will be based on your assistance in developing practice questions and helping the professor moot the students who are arguing.

Assignment	Weight	Due Date
<p><b>Self-Evaluation and Team Feedback</b></p> <ul style="list-style-type: none"> <li>You will evaluate your own performance, as well as your teammates'. Your feedback will be quantitative and qualitative.</li> <li>Your self-evaluation will be emailed to your assigned professors.</li> <li>Your team feedback will be emailed to each teammate, copying your assigned professors.</li> </ul>	10%	<p>By 5:00 p.m. (ET) <b>on the earliest of:</b></p> <ul style="list-style-type: none"> <li>The 21st day after your competition;</li> <li><b>or</b></li> <li>Apr. 22, 2024</li> </ul>

### Course Calendar

Week	Topics	Class Preparation
<p><b>Week #1</b> Jan. 16–19, 2024</p>	<p><b>Class #1: Introduction</b></p> <ul style="list-style-type: none"> <li>Rules Governing Preparation of Appellate Briefs: <ul style="list-style-type: none"> <li>FRAP</li> <li>Sup. Ct. Rules</li> <li>Moot court contest rules</li> </ul> </li> <li>Pre-Argument Sections of the Brief: <ul style="list-style-type: none"> <li>Statement of Issues/Questions Presented</li> <li>Statement of the Case</li> <li>Statement of Facts</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>S. Ct. Rules 24 &amp; 34</li> <li>Making Your Case (p. 82–97)</li> <li>Justice Interviews (p. 1–40)</li> </ul>
<p><b>Week #2</b> Jan. 22–26, 2024</p>	<p><b>Class #2: The Argument</b></p> <ul style="list-style-type: none"> <li>Summary of the Argument</li> <li>Writing Style</li> <li>Editing</li> </ul>	<ul style="list-style-type: none"> <li>Making Your Case (p. 1–82, 97–137)</li> <li>Justice Interviews (p. 41–78)</li> </ul>
<p><b>Weeks #3–4</b> Jan. 29 – Feb. 9, 2024</p>	<p><b>Individual Team Meetings</b></p>	

<b>Week</b>	<b>Topics</b>	<b>Class Preparation</b>
<b>Week #5</b> Feb. 12–16, 2024	<b>Class #3: Oral Argument</b> <ul style="list-style-type: none"> <li>• Oral argument techniques and preparation</li> </ul>	<ul style="list-style-type: none"> <li>• Making Your Case (p. 137–205)</li> <li>• Guide for Counsel</li> <li>• <b>Section 002:</b> Prepare roadmaps for oral argument</li> </ul>
<b>Weeks #6–10</b> Feb. 19 – Mar. 29, 2023	<b>Individual Team Meetings &amp; Mooting</b>	<ul style="list-style-type: none"> <li>• Prepare oral argument for competition</li> <li>• Draft 3–5 questions for each issue on each side</li> </ul>
<b>Weeks #11–13</b> Apr. 1–22, 2024	<b>Competition Debriefing, Self-Evaluation, &amp; Team Feedback</b>	

### **Additional Course Policies**

#### **Academic Integrity**

All members of the law school community are expected to exhibit honesty and competence in their academic work. Academic dishonesty is defined here as cheating of any kind, including misrepresenting your own work, taking credit for the work of others without crediting them and without appropriate authorization, and fabricating information.

Acts of academic dishonesty are a legal, moral, and intellectual offense against the community and will be adjudicated through the proper university channels. For more information, review the [Honor Code](#).

#### **Accommodations for Students with Disabilities**

If you have a disability requiring accommodations under the Americans with Disabilities Act, contact [Disability Services](#) at (703) 993-2474 or [ods@gmu.edu](mailto:ods@gmu.edu). All academic accommodations must be arranged through ODS and will not be applied retroactively.

#### **Preferred Pronouns**

Everyone has the right to be addressed by the name and personal pronouns that correspond to their gender identity, including non-binary pronouns. You can update your preferred pronouns on Patriot Web. If you have not yet updated your pronouns, please do so at the beginning of the semester so we can ensure we refer to you by the correct pronouns. If your pronoun set is not available, please let us know. We also recognize that preferred names and pronouns may change during the semester. If at any point during the semester you would like to be addressed differently, please let us know.

As part of our commitment to inclusion in this course, you are expected to respect your classmates and use their preferred name and pronouns. Mistakes may happen. If you make a mistake or are corrected, please briefly apologize and correct yourself.

To learn more about personal pronouns and why they are important please review the University's [Chosen Name and Pronouns Policy](#) and visit [pronouns.org](http://pronouns.org).