

Appellate Advocacy
Course # 5793, 2 Credits
Prof. Henry T. Wihnyk
Spring 2018

GRADING POLICIES, MY EXPECTATION and WRITING ASSIGNMENTS.

Welcome to Appellate Advocacy! This is the second part of a two-semester course designed to get you thinking and writing like lawyers. Our course has six components:

- [1] writing assignments and exercises, consisting of several projects designed to teach you how to formulate persuasive legal analysis and to prepare an appellate brief,
- [2] conferences with teaching assistants to review specific assignments,
- [3] conferences (and office hour appointments) with me to review your written work,
- [4] in-class discussions, and
- [5] appellate oral argument exercises designed to teach you how to prepare for and present an argument before an appellate court.

It is anticipated that you will spend approximately 2 hours out of class reading and preparing writing exercises and assignments for every 1 hour in class.

A Note About Assignments

Your reading assignments are heavy at the start of the semester, but taper off towards the end. Your writing assignments are spread out over the semester.

This semester, you will be required to pace yourself more than you did last semester. Please make sure that you do not wait until the last moment to write sections of the brief such as the Caption page; Table of Contents; Table of Authorities; Questions Presented; Statement of the Case and Facts; Summary of Argument; Conclusion (not exceeding 1 page).

For your convenience, Professor Wihnyk will provide, in the TEMPLATES link on the course TWEN page, templates of these sections of the brief. You'll need to download them into your Word file. (This will save you HOURS of work!)

Appellate Advocacy Objectives and Learning Outcomes

The primary objective of this course is to teach you how to construct a thorough legal argument and express it effectively and persuasively in writing. An additional objective is to teach you how to perform effectively in presenting oral argument in support of your legal position.

Upon completion of this course, you should be able to

- Apply a lawyer's ethical and professional standards in the context of written and oral advocacy.
- Demonstrate an understanding of appellate standards of review of trial court decisions.
- Use effective techniques of persuasion.
- Develop a theme and integrate that theme into your argument.
- Frame a legal issue to persuade a court to rule in your favor.
- Present a compelling account of all relevant facts.
- Write a persuasive argument, supported by credibility, logic, the law, and a commanding narrative.
- Use effective organizational techniques.
- Demonstrate an understanding of the importance of adhering to appellate procedural rules and formatting requirements for submitting appellate briefs to a court.
- Demonstrate an understanding of the basic appellate process and fundamental appellate concepts, including the decision to appeal.
- Edit and proofread a persuasive legal document.
- Prepare and effectively present an oral argument in support of your legal position.

Grading

Appellate Advocacy is graded by letter and is subject to the mandatory grade curve established by the College of Law.

Your final grade in the course will be determined by:

1. Final Draft of Appellate Brief: 80%

2. Participation: 20% - including:

Satisfactory work on all assignments (see Class Expectations below).

Compliance with Course Policies and Class Expectations.

You must complete all assignments to pass the course.

Information on UF Law Grading Policies

Grade	Points
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	3.00
B-	2.67
C+	2.33
C (Satisfactory)	2.00
C-	1.67
D+	1.33
D (Poor)	1.00
D-	0.67
E (Failure)	0.0

The law school grading policy is available at:

<http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>

Class Expectations

I expect you to:

- (1) satisfactorily and timely complete all writing, oral argument and citation assignments and exercises;
- (2) attend and demonstrate preparedness in class, in oral argument sessions, and in writing conferences; and
- (3) demonstrate professionalism.

What this means:

Satisfactorily complete assignments

The goals of all assignments in this course are to teach you the principles of and give you practice in developing persuasive legal analysis and argument skills. I want you to use the assignments to practice these techniques, to learn from your teaching assistant's and my feedback, to learn from your strengths and weaknesses and to improve.

For each assignment, I will provide to you a checklist of my expectations for the project and will use the checklist to aid me in assessing the quality of your work. I will evaluate your performance based on the skill and effort you demonstrate in doing the best work that you can on each assignment, the skill and effort you demonstrate in applying the principles discussed in the assigned reading and during our class meetings, and the skill and effort you demonstrate in revising your work.

Timely complete assignments

As it is in law practice, time management is a critical component of our class. Just as clients, senior partners, and judges expect work to be submitted timely, I expect your work to be submitted no later than the specified deadline. If you worked for me as a law clerk and you submitted an assignment after the deadline, without excuse, I'd likely fire you and definitely would not offer you a permanent position in the firm. Therefore, I will not accept such conduct in this course.

I will not review ungraded assignments if not submitted by the deadline. They will be considered to be unsatisfactory. Your final grade will be lowered one level (e.g. B to B-) for each

ungraded assignment not submitted by the deadline. Graded assignments will be lowered one level (e.g. B to B-) for every day or portion of a day that the assignment is late.

I will excuse late submissions only in limited emergency situations. As to emergencies involving serious illness (your, a close friend, or a family member), accident, or the complete death of your computer (i.e., it blows up, the hard drive crashes), please call me, e-mail me, or see me as soon as possible. Under these circumstances, I will delay the deadline for your paper to give you enough time to deal with the emergency. Bottom line: Meet all deadlines. If you know you can't, let me know as soon as possible. I am far more likely to grant extensions of time to students who contact me before the assignment is due, than to those who see me on or after the deadline.

The following examples do not constitute an excuse for missing a deadline – so please don't even ask: a job interview; reasonably foreseeable transportation trouble; reasonably foreseeable computer or printer problems - this includes any difficulties submitting assignments on the course TWEN page; typist trouble; “ran out of time”; “left it at home”; “didn't understand the assignment or how to complete it.”

Demonstrate preparedness in class

You are responsible for the information contained in all TWEN postings, handouts and assigned reading. I expect that you will have completed the reading assignment and that you will participate in class. I will call on students during class and expect them to be prepared. I will administer several quizzes to evaluate your understanding of the assigned reading. I also expect that you will be prepared to participate during in-class group exercises. This is not a lecture course. I will not use our valuable class time to reiterate what you've read. Instead, I will use class meetings to give you practice using the skills and applying the principles covered in the assigned reading. Our class meetings will have value to you only if you come prepared to participate.

I understand that sometimes things will complicate your life and that you may not be prepared for a particular class session. If you are unprepared to participate in a class session, please let me know before class begins, and I will not call on you that day. Do not, however, make a habit of this.

Unpreparedness may result in the lowering of your final grade.

Demonstrate preparedness in writing conferences

You will be required to meet with me to confer about your work in the course. I expect that before a writing conference you will have reviewed all comments written on your paper by your teaching assistant and by me. I expect that you will have reviewed all portions of our text

and course materials relevant to the revisions you'll need to perform. I expect that you will come to the conference with specific questions for your teaching assistant and me about your work and how to improve it.

Unpreparedness may result in the lowering of your final grade.

Demonstrate professionalism

In three short years you will be representing clients in matters affecting their liberty, their lives, and their property. Now is the time to start taking this responsibility seriously. With this in mind, I expect that you will conduct yourself professionally. By professionalism, I mean conforming to the technical and ethical standards of the legal profession as well as its etiquette and culture and conforming to my course policies.

•Professional Quality Work

I expect you to produce professional quality work. You have the ability and maturity to approach your work with diligence. I expect you to produce work that exhibits a professional quality conforming to all format requirements and that is carefully proofread. When preparing an assignment for this course pay attention to detail as you would if you were a law clerk or practicing attorney preparing a document for review by a senior partner or by a client. Just as an employer or client would not accept sloppy work from you, I will not accept such work in this course.

•Professional Conduct in Class

In law practice, your role as a member of the legal profession and as an officer of the court requires that you conduct yourself with honor, courtesy, civility and professionalism. I expect this conduct in class. This means arriving on time, focusing on what is going on in class and not distracting others. I expect each of you to listen courteously to your colleagues, even if they express ideas you do not agree with. You will be given the same uninterrupted opportunity to express your own ideas.

Although I welcome and encourage class participation, do not call out in class. If you want to contribute to the class discussion raise your hand and wait to be recognized.

You may not use information technology in class (laptops, tablets, iPads, etc.) unless authorized by me for specific class purposes.

Silence cell phones and beepers.

Do not wear hats in class.

You may not record class sessions without my express consent.

Attendance

You are required to attend all scheduled class meetings, writing conferences, oral argument exercises, and mandatory special events. In general, acceptable reasons for absence from or failure to participate in class include illness, serious family emergencies, special curricular requirements, military obligation, severe weather conditions, religious holidays and court-imposed legal obligations (e.g., jury duty or subpoena).

If you must miss class, please contact me in advance via email and ask for an excused absence. If you miss class because you have been ill, please contact me and your teaching assistant regarding your absence before the next class meeting.

Your final grade in the course may be lowered one level (e.g. B to B-) for each unexcused absence. If you miss a class, you are responsible for finding out what you missed and obtaining any handouts or assignments. I will permit a reasonable amount of time to make up the material or activities covered in class during an excused absence.

The law school's policy on attendance can be found at:

<http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3>

Getting in Touch with Me

Please come see me in my office (339 Holland Hall) or get in touch with me by e-mail if you have any questions regarding this course or an assignment. My office hours will be posted on the course TWEN page. My office phone number is 273-0881. My e-mail address is wihnyk@law.ufl.edu.

Office Hours

My "official" office hours will be posted on our course TWEN page. You may guarantee a time to see me by reserving a time on the sign-up sheet located at the "Appointments with Prof. Wihnyk" navigation link on our course TWEN page. You can also schedule a particular time with me in person or via email.

Please feel free to stop by my office at other times. If I am able, I'll be happy to meet with you. Usually, I keep my office door closed, so feel free to knock on the door.

Format Requirements for Writing Assignments

The following strictly enforced rules govern the form of all writing assignments:

- All assignments must be typewritten, double-spaced with one-inch (bottom, top, left, right) margins. The bottom margin should be one inch from the last line of the text, not from the page number.
- Do not align or justify the right margin.
- Each page should be numbered (center, bottom).
- Type must be Times New Roman 12 point.
- All citations must follow Bluebook Citation Manual rules.

Responsibilities to Your Other Classes

As lawyers you will be responsible for many clients or legal matters at the same time. When you are engaged in a big project involving one client, you must still attend to the legal affairs of your other clients. Likewise, when you are engaged in preparing an assignment for Appellate Advocacy, you are still responsible for attending your other classes and completing the work for those classes.

The Honor Code - its Role in Our Course

In every aspect of this course – from written assignments of all types, to meetings with me and your teaching assistants, to class attendance – you’re strictly bound by the Honor Code as well as all rules, codes, regulations, and policies of the University and of the College of Law regarding student conduct.

Collaboration

All work in this course must be your own. You must do your own research, writing, proofreading, and editing. You may, however, use the services of a typist. The typist may not edit or direct you to edit or change what you’ve written. I want to help you develop your skills; I can’t do this if the work I review isn’t your own. Only you, your teaching assistant, and I may review your work for the purpose of planning revisions. No other person—classmates, friends, family—may review your work. Unless I specifically instruct you otherwise, you may not read another student’s work – either a present student’s or a past student’s – and you may not allow another student to read your work.

You may discuss cases, arguments, research, and citation techniques with each other.

Plagiarism

Representing another's work as your own constitutes plagiarism. Also, paraphrasing or quoting from a case or a law review article without properly acknowledging the source or without including quotation marks where such marks are appropriate constitutes plagiarism. Any paper evidencing plagiarism will automatically receive a failing grade and will be referred to the law school's Honor Committee. It is no defense to a charge of plagiarism to plead ignorance of what constitutes plagiarism or lack of intent to plagiarize.

Course Evaluations

Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

Accommodation for Students with Disabilities

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester.

For more information, contact the Dean of Students Office.

Writing Exercises

Exercise #1 Rule Explanation - Case Illustration

Prepare a case illustration of Parkins as it would appear in the rule explanation portion of your sub-argument regarding actual notice.

Exercise #2 Rule Application

Make a list of the cases that you have selected to use in the rule application portion of your sub-argument regarding actual notice.

List the trigger facts from each case and the corresponding Record facts that are relevant to the sub-argument regarding actual notice.

Exercise #3 Statement of Facts

1. List material facts (with record cites) that are helpful to your client.
-List the cases that make these material.
2. List material facts (with record cites) that are unfavorable to your client.
-List the cases that make these material.
3. List background facts.
4. Provide examples of how you would phrase at least two of the helpful facts.
5. Provide examples of how you would phrase at least two of the unfavorable facts.
6. Provide examples of how you will refer to the parties and other key individuals in the Statement of Facts.

Exercise #4 Remedial Measures “Outline”

Make a list of the cases that you have selected to use in the remedial measures sub-argument.

List the trigger facts from each case and the corresponding Record facts that are relevant to the sub-argument regarding remedial measures.

Exercise #5 Question Presented

Prepare the Question Presented as it will appear in your brief.

Exercise #6 Argument Headings

Prepare the argument headings as they will appear in your brief’s Table of Contents.

Writing Assignments

Writing Assignment #1

Prepare a draft of the rule explanation portion of the sub-argument regarding actual notice. Submit this assignment according to the instructions in the syllabus and on our Course Twen page assignment drop box.

Writing Assignment #2

Prepare a draft of the rule application portion of the sub-argument regarding actual notice. Submit this assignment according to the instructions in the syllabus and on our Course Twen page assignment drop box.

Writing Assignment #3

Prepare draft of the sub-argument regarding remedial measures. Submit this assignment according to the instructions in the syllabus and on our Course Twen page assignment drop box.

Writing Assignment #4

Appellate Brief

Prepare a final draft of your appellate brief. This will require, among other things, revision of writing assignments 1, 2, and 3. Submit this assignment according to the instructions in the syllabus and on our Course Twen page assignment drop box.

Final Brief Format Requirements

Every jurisdiction (each state and the federal courts) has its own rules concerning the form and contents of an appellate brief. In practice, you will need to consult the rules of appellate practice before drafting a brief. For this course, the following rules govern the form of our briefs. These requirements will be strictly enforced.

Your brief must be typewritten in Times New Roman 12-point font, double-spaced with one-inch (top, bottom, left, right) margins. Do not align or justify the right margin. Your brief (hard copy) must be bound on the left with a staple. Do not use special folders or binders. Any briefs failing to conform to these requirements will receive a failing grade. Your brief must contain the following:

1. Cover Page
2. Table of Contents

3. Authorities Cited
Your citation form must conform to the rules contained in the Bluebook 20th edition.
4. Question(s) Presented
5. Statement of the Facts
6. Summary of Argument
7. Argument
8. Conclusion

Class Meetings – Topics and Assignments

I will give quizzes to evaluate your understanding of the assigned reading.

Week	Class/Date	Topics	Assignment for Class	Exercises and Writing Assignments
1	#1 Monday 1/9/18	-Introduction to Appellate Advocacy, -Persuasion, -Appellate Practice	READ: TWEN- Syllabus and Course Policies TEXT- Chapters 1 and 5	
	#2 Wed. 1/10/18	Our Record on Appeal and Authorities	READ: TWEN- Record on Appeal, Authorities: <i>Parkins</i> (Do not read the Retaliation analysis on pages 1038-39) and <i>Zimmerman</i> .	
2	1/15/18 MLK Holiday No class			
	#3 Wed. 1/17/18	Our Record on Appeal and Authorities	READ: TEXT- Chapter 7 – § 7.1, § 7.2, § 7.4 TWEN – Remainder of Authorities for our case.	
	Friday 1/20/18			Complete ICWE “When to Cite” no later than 5 p.m.
3	#4 Monday 1/22/18	-Organizing and Structuring Arguments -Developing Persuasive Arguments – Rule Explanation	READ: TWEN- Sample Brief’s Argument section. TEXT- Chapter 8- I. & II. pages 161 - 179	
	#5 Wed. 1/24/18	Rule Explanation		
	Friday 1/27/18			Complete ICWE “Case Names” no later than 5 p.m.

4	#6 Monday 1/29/18	Rule Explanation		Bring your work on Exercise 1 to class.
	#7 Wed. 1/31/18	-Rule Application, - Refining Persuasive Arguments -Oral Argument	READ: TEXT- Chapter 8- III. Pages 179 – 185 Chapter 9- I. A and B, III., IV., V., VI. Omit I. C. (page 190) and Omit II. Pages 191-196; Chapter 14 §14.1	
	Friday 2/2/18	Attend & Observe Florida Moot Court Mcguire Competition Main Courtroom Advocacy Center – time t/b/a		Complete ICWE “Case Location” no later than 5 p.m.
5	#8 Monday 2/5/18	Rule Application		Turn in Writing Assignment 1 to assignment drop box.
	#9 Wed. 2/7/18	Rule Application		Bring your work on Exercise 2 to class.
	Friday 2/10/18			Complete ICWE “Court & Date” no later than 5 p.m.
6	#10 Monday 2/12/18	Oral Argument Demonstration		
	#11 Wed. 2/14/18	-Constructing Appellate Briefs -Finalizing Writing Assignment #2	READ: TEXT- Chapter 11 Omit “E. Issue (or Question) Presented” pages 238 – 242	

	2/17/18 Friday			Complete ICWE "Short Form (Cases)" no later than 5 p.m.
7	#13 Monday 2/19/18			Turn in Writing Assignment 2 to assignment drop box.
	#14 Wed. 2/21/18	-Drafting the Statement of Fact	Chapter12 TWEN- Sample Brief's Statement of Facts	Bring your work on Exercise 3 to class.
	Friday 2/24/18			Complete ICWE "Prior & Subsequent Case Hist." no later than 5 p.m.
8	# 15 Monday 2/26/18	Preparing for and Presenting Oral Argument	TEXT- Chapter 14 – § 14.2, § 14.3, § 14.4 II. "Arguing Before Appellate Courts" pages 358 – 364	
	# 16 Wed. 2/28/18	Notice & Remedial Measures	Review Authorities	Bring your work on Exercise 4 to class.
9	Spring Break	Spring Break	Spring Break	Spring Break
10 Mini-Orals	#17 Monday 3/12/18	Drafting the Question Presented &	READ: TEXT- Chapter 11 E pages 238-242	

this Week		Argument Headings	Chapter 9 II. Pages 191 - 196 TWEN- Sample Brief's Table of Contents	
	# 18 Wed. 3/14/18	Finalizing Writing Assignment 3		Bring your work on Exercises 5 & 6 to class.
	Friday 3/17/18			Complete ICWE "Signals" no later than 5 p.m.
11 Practice Orals this Week	# 19 Monday 3/19/18	Settlement Conference		Turn in Writing Assignment 3 To assignment drop box.
	# 20 Wed. 3/21/18	Question Presented and Argument Headings		
	Friday 3/24/18			Complete ICWE "Comprehensive Core Exercises" no later than 5 p.m.
12 Practice Orals this Week	# 21 Monday 3/26/18	Teaching Assistant Group Meetings with Prof. Wihnyk		
	#22Wed. 3/28/18	Teaching Assistant Group Meetings with Prof. Wihnyk		
13 Final Orals this week	#23 Monday 4/2/18	Teaching Assistant Group Meetings with Prof. Wihnyk		
	#24 Wed. 4/4/18	Drafting the Summary of Argument	READ: TEXT- Chapter 11 G. TWEN- Sample Brief's Summary of Argument	
14 Final Orals this week	Monday 4/9/18 No Class			

	#25 Wed. 4/11/18	-Editing and Polishing for Persuasion	TEXT- Chapter 13 Omit IV. Pages – 302 - 303	
15	Monday 4/16/18 No Class			
	#26 Wed. 4/18/18	Finalizing Writing Assignment 4 – Final Brief		
16	# 27 Monday 4/23/18	Wrapping Things Up		Turn in Writing Assignment 4 To assignment drop box.