

Draft of January 8, 2018
Thurgood Marshall School of Law

LAWYERING PROCESS II
Spring 2018

COURSE GUIDELINES AND SYLLABUS

Tuesdays and Thursdays

Section 10—1:00 – 1:50, Room 105
Section 12—10:00 – 10:50, Room 210

Professor Mary Q. Kelly
Office 231 E
(See page 4 for contact information)

“The oral argument is the tip of the iceberg — the most visible part of the process — but the briefs are more important.”
—Supreme Court Justice John Roberts

“If you see somebody who has written a sloppy brief, I’m inclined to think this person is a sloppy thinker. It is rare that a person thinks clearly, precisely, carefully and does not write that way. And contrariwise, it’s rare that someone who is careful and precise in his thought is sloppy in his writing.”
—Supreme Court Justice Antonin Scalia (deceased)

To read these quotations in context and learn more about the Supreme Court Justices’ thoughts on writing, please see this link: <http://legaltimes.typepad.com/files/garner-transcripts-1.pdf>

COURSE GUIDELINES AND ADMINISTRATIVE INFORMATION

Welcome back! I look forward to working with you this semester.

Section 1. Course Goal and Outcome: Learning the “Tools of the Trade”

1.1 Goals and Outcomes: Excellent Persuasive Legal Writing.

The general goal, or outcome, of LP II is the acquisition of a set of basic legal analytical and persuasive writing skills that are critical to the process of lawyering. Recognizing that law is a writing profession, we work toward achieving that goal through writing instruction and practice. We study examples of good legal writing and the advice of experts. We build on the concepts and skills learned and practiced in LP I and continue to hone students’ legal analytical skills.

The specific course goal is to write an assigned persuasive piece well. Students will learn how to write as an advocate representing one side in a dispute, where the purpose is not to explore relevant law (as students did in LP I) but to persuade the court to decide the case for the client.

To help reach the course goals, LP II will focus on development of the following skills:

- 1.1.1. **Legal analysis**– including reading cases, narrowing and expanding holdings, using and distinguishing precedent, synthesizing cases, issue spotting, applying law to facts, interpreting statutes, developing and evaluating legal arguments, and counseling clients.
- 1.1.2. **Legal writing** –continued review of examples of good writing as well as of grammar rules to ensure **clarity, conciseness, and correctness (the “three Cs”)** in persuasive and other legal pieces.

1.2. Course Objectives.

The main objective of LP II is to enable students to practice law competently and successfully. An ethical and resourceful law graduate who writes legal documents well is likely to be a successful legal practitioner. Students meet the LP II objective by further learning, developing, and practicing the key lawyering skills practiced in LP I. Students will continue to hone these skills in the second and third years of law school.

1.2.1 **Critical Reading and Thinking.** Students will be able to:

- a. Read, understand, and evaluate cases by identifying the elements of a reported opinion, including:
 - procedural facts and legally relevant facts,
 - issues,
 - holdings, reasons, and policies,
 - legal rules, and
 - disposition.

- b. Read, understand, and synthesize a line of related opinions;
- c. Read, understand, and evaluate statutes and regulations.

1.2.2. Legal Problem Solving. Students will be able to:

- a. Identify legal issues in simple and complex fact situations;
- b. Identify the relevant controlling and advisory legal authority and policy;
- c. Use understanding of relevant legal authority to predict answers to the legal issues or questions presented;
- d. Identify potential alternatives to achieve the client's goal;
- e. Identify unresolved legal and factual issues.

1.2.3. Legal Argument. Students will be able to make effective legal arguments by:

- a. Identifying the legal issues;
- b. Identifying the relevant facts, authority (cases, statutes, and/or regulations), and policy;
- c. Developing, elaborating, and evaluating legal theories relevant to the client's situation;
- d. Accurately formulating and applying authority and rules (or principles of law) to the client's situation;
- e. Supporting the client's position by analogizing to favorable facts, authority, and policy;
- f. Distinguishing unfavorable facts, authority, and policy from the client's position;
- g. Articulating clear inferences for factual support;
- h. Identifying elements of statutory analysis (legislative history and canons of interpretation) relevant to the client's position.

1.2.4. Legal Drafting. Students will be able to:

- a. Identify the need and purpose of legal documents, assess the perspective of the recipient of the communication, and use reliable communication practices and principles;
- b. Communicate and explain their analysis and position effectively in writing to colleagues, supervisors, clients, or judges by:
 - i. Organizing and expressing ideas with precision, clarity, logic, and economy;
 - ii. Using proper grammar, syntax, and punctuation;
- c. Drafting the following legal documents that communicate clearly and comply with applicable rules and formatting requirements:
 - i. Predictive memorandum;
 - ii. Client letter;
 - iii. Persuasive memorandum (trial motion brief).

1.2.5. Recognizing and resolving ethical dilemmas and professionalism.

- a. Students will be able to:
 - i. Employ strategies for working cooperatively and collaboratively; and
 - ii. Employ strategies for allocating time, effort, and resources efficiently,

- completing tasks within time constraints, and meeting deadlines;
- b. Students will be introduced to certain rules of professional responsibility and the nature and sources of these ethical standards and will begin to appreciate the mandate for professional and competent representation.

1.2.6. **Legal Research and Citation.** Students will be able to:

- a. Identify the need for legal research;
- b. Articulate and implement a research plan that explores and examines relevant sources;
- c. Memorialize research results in an appropriate format;
- d. Monitor law changes affecting completed research;
- e. Use book and electronic research tools;
- f. Use proper legal citation format in accordance with the Bluebook or the Texas Rules of Form (Greenbook), whichever is applicable.

Section 2. Course Methodology: “Learning by Doing”

2.1. Like the methodology of LP I, the methodology of LP II is based on the principle that the best way to learn lawyering skills is by practicing them. To the extent possible, participating in the course will be similar to working in a law practice. You will be learning by doing – by practicing each of these skills in class and through writing assignments.

2.2. In addition to the writing assignments, students will also complete grammar assignments and other editing exercises designed to ensure their knowledge of basic grammar rules, to review legal style, and to help them develop keen attention to detail.

Section 3. General Information

3.1. Professor’s contact information

Name: Mary Q. Kelly, Ph.D., J.D.
Office: Rm. 231 E
Office Phone: 713-313-5688
Email: mqkelly@tmslaw.tsu.edu

Important: When sending an email, please help your professor identify you and your concern! Any email from a student should state in the Subject line first, the LP II Section number of the sender, and second, a brief reference to the subject of the email. The email should be signed with the full name of the sender.

Examples: Subject: LP II, Section 10: Question on WA 2
or
Subject: LP II, Section 12: Explanation of absence on 2/1/18

Office Hours: Tuesday 2 p.m.—4 p.m.
Thursday 2 p.m.—4 p.m.

And by appointment

3.2. Textbooks

The required textbooks for LP II are:

Lawyering Process II Course Reader (photocopied materials). The Reader can be purchased from TSU's Copy Center in the Student Life Center, Room 231 (2nd floor).

Texas Rules of Form, 13th Edition (Texas Law Review)

You still need the following textbooks for this course (from the fall semester):

A Lawyer Writes, Second Edition, by Coughlin, et al.
The Bluebook, A Uniform System of Citation, 20th Edition

Recommended textbook:

The Redbook: A Manual on Legal Style, Third Edition, by Bryan A. Garner

3.3. Class Meeting Times

This class meets for one class hour each Tuesday and Thursday.

Section 4. Assignments

The reading assignments and discussion exercises are listed in the course syllabus under the day of the class for which they should be prepared. Each writing assignment is listed under the day it is assigned and the due date of the assignment will be listed, sometimes repeatedly, as a reminder. Other assignments (see Section 6) are listed under the date they are due. The syllabus also provides the relevant times that other assignments are due and the format in which each should be submitted. For certain exercises, formatting will be provided in the instruction sheet for the particular assignment.

Section 5. Format Requirements for Writing Assignments

All writing assignments must comply with these requirements, unless the professor specifically instructs otherwise. The requirements will be strictly enforced.

1. Papers should be typed using Microsoft Word in 12-point Times New Roman font and submitted on plain white, 8-1/2 x 11 inch paper, using one side only. Footnotes, if any, may be no smaller than 10 point font.
2. Margins should be one inch on both sides and at the top and bottom, and no page may include more than 25 lines per page, including footnotes.
3. Text should be double spaced. Footnotes should be single spaced.

4. You may choose to place either one or two spaces between sentences, but please be consistent. Tabs, such as those used to begin a new paragraph, must be at least one half inch in length on your Word ruler.
5. Each assignment should be consecutively paginated with a number centered at the bottom of each page. Footnotes should be in Times New Roman font; please note that the Word default is Courier font, so you will need to adjust your page numbers to Timers New Roman font.
6. Please consider printing a hard copy of your assignment before turning it in, so you can confirm that you have followed these requirements.
7. All pages of each assignment should be stapled together in the upper left-hand corner. All hard copy submissions should be printed on one side of the page and with good ink quality.

Section 4. Grading Policies and Procedures

4.1. General Grading Information

4.1.1. Course Format: Lawyering Process II is a two-credit course

4.1.2. Final Grade: Your final grade will be based on the following:

<u>a.</u>	Writing Assignment #1	15%
<u>b.</u>	Writing Assignment #2	10%
<u>c.</u>	Writing Assignment #2 Final	40%
<u>d.</u>	Statutory Final Examination	15%
<u>e.</u>	Other Assignments*	10%
<u>f.</u>	Oral Argument	5%
<u>g.</u>	Participation, Professionalism, and Attentiveness	5%
		TOTAL: 100%

*“Other Assignments” may include reports of court observations, citation assignments, quizzes, and required elements. LP II is subject to TMSL’s mandatory curve for Lawyering Process, as stated in the current Student Rules and Regulations.

A:	10-13%
B:	25-34%
C:	35-45%
D/F:	0-08%

4.2. Exam Numbers. To preserve anonymity, students will, unless instructed otherwise, submit assignments identified by exam numbers and not by their names. Students will use a previously unassigned number for each major writing assignment. If a student places the student’s name anywhere on the assignment, the students will waive anonymity and may lose points.

4.3. Late or Over-Length Assignments; TWEN Posting

4.3.1. **Late Submission of Assignments:** Please turn in assignments on time or early to avoid serious grade consequences. Students who leave matters to the last minute are at risk of encountering problems that prevent them from turning in assignments on time, which in turn can result in a significantly lower grade.

4.3.2. **Assignments Submitted Using Westlaw's TWEN:** Assignments due on TWEN are due on the date and at the time indicated on the assignment, in the syllabus, or by me. Please see the additional guidelines below for writing assignments and other assignments. Late assignments lose 10% of the points if submitted within one hour of the appointed time, and then a further 20% of the points for each day or part of a day after that. I will grade your final assignment submitted, meaning that if you submit one assignment before the deadline and one after, the late assignment is the one that I will grade and the assignment is late.

4.3.3. **Submission of Over-Length Writing Assignments:** For each page or portion thereof that exceeds the page limit for that assignment, your grade will be reduced by 10% before any other deduction. I will not review any pages that exceed the page limit. If your paper exceeds the mandatory number of lines per page or does not comply with the margin requirement, I will consider it to have exceeded the page limit and will adjust the score for the assignment accordingly.

4.4. **Attendance and Dress:** Class attendance is mandatory. Attendance will be taken at the beginning of each class. Per Article III, Section 9 of the Student Rules and Regulations, for this two-hour course, you will be permitted three (3) absences before your grade may be lowered. **Missing even one class, however, will cause you to lose access to important information. Voluntarily departing from a class early, or dismissal from class for misconduct or lack of proper preparation, will count as an absence.** Please see the Student Rules and Regulations for information on grade reduction and further details on absences.

Dress: Law school is pre-professional and students should do themselves a favor by dressing appropriately. For LP class: no caps, no ripped jeans, no spike heels; yes to tucked-in shirts and general neatness. Casual dress is fine, but please refrain from wearing sloppy or party-time casual. Think: If you ran into your future boss, would you want that person to remember you by what you are wearing?

4.5. Laptop Misuse: Laptop computers may be used only for class-related note-taking and reference. I will rescind the privilege of laptop use, individually or collectively, if it is abused. Cell phones and similar screen devices must be turned off and placed out of sight .

4.6. Accommodations: Please contact Dean Mouton (Student Affairs) right away if you require any special accommodations regarding any of the assignments. You must contact Dean Mouton at least two class days before any related assignment is due.

Section 7. Writing Advisors and Writing Center

This semester, you will continue to work with your assigned WA. The WA is available to assist you with mastering the lawyering skills learned in this class, particularly the skills of legal analysis and writing. Your WA will provide you with general feedback on certain assignments, namely the short writing exercises.

The WAs also staff the Lawyering Process Writing Center, which is located on the first floor of the library. If you have a question about an assignment, you may visit the Writing Center. You should ask the writing advisors discrete questions about legal analysis and writing. You cannot ask a WA to approve or sign off on any piece of writing, as your WA does not grade your paper. After an assignment has been graded, your WA may review the entire document with you if you have any questions. Notwithstanding your WA's assistance or any feedback that you receive from the Writing Center, you are ultimately responsible for your final work product. Please follow what is said in class over the advice of any WA.

Section 8. Discussions of Assignments

I encourage you to discuss your assignments with your colleagues in this Lawyering Process II section. You should not discuss the assignments with anyone else. Certain classes will be devoted to open discussion of the writing assignments. Remember, however, that your written product on all of the assignments must be your own. You may discuss your ideas about a given assignment and test them on your colleagues (as you would in your practice), but you will learn nothing from simply parroting the work of another. Of course, if your work is sheer imitation, it will be plagiarism, which is strictly prohibited. See Section 9.

Section 9. Plagiarism

Plagiarism in *any* form is strictly prohibited. You may not plagiarize any other written work, including, but not limited to, another student's memorandum, a prior exemplar or sample memorandum, an internal legal memorandum, or any memorandum of points and authorities filed with any court. **Any form of plagiarism evident in any assignment, or part of an assignment, will result in a grade of F for the course and the plagiarism issue will be forwarded to the Dean for appropriate action.**

If you have any doubts about the definition of plagiarism, please ask your professor.

SCHEDULE FOR LAWYERING PROCESS II, SPRING 2018

(Note: Assignments and due dates may be adjusted.)

WEEK 1

TUESDAY, JANUARY 9, 2018

Review of LP I and Introduction to new semester;

THURSDAY, JANUARY 11, 2018

Introduction to assignments in LP II.

WEEK 2

TUESDAY, JANUARY 16, 2018

Client Advice Letters

** Writing Assignment #1 Assigned
(Due Monday, January 29, 2018)

Read: Coughlin (*A Lawyer Writes*) pp. 273-291

THURSDAY, JANUARY 18, 2018

Client Advice Letters (con't)

Read: Lawyering Process II Course Reader ("Reader"):
Advisory Writing: Advice Letter, pp. 1-6
Sample Advice Letters, 7-10
Persuasive Writing: Demand Letter, pp. 11-15
How to Write Letters Non-lawyers Will Read, pp. 16-24

WEEK 3

TUESDAY, JANUARY 23, 2018

Client Service and Professionalism

Read: Course Reader ("Reader") pp. 25-27: *How to Lose a Client in Ten Steps*

THURSDAY, JANUARY 25, 2018

Review and discuss persuasive writing exemplars in class

WEEK 4

MONDAY, JANUARY 30, 2018

Client letter due per assignment instructions.

TUESDAY, JANUARY 29, 2018

Professional e-mails

Read: Coughlin pp. 295-304

In-class exercise on professional emails—please bring a copy of your client letter to use in class.

THURSDAY, FEBRUARY 1, 2018

Persuasive Writing

Introduction to Persuasive Writing

Introduction

Statement of Facts

Read: Reader, Persuasive Writing Notes, pp. 28-45

Reader, Civil Litigation Timeline, pp. 63-66

Coughlin: pp. 305-311

WEEK 5

TUESDAY, FEBRUARY 6, 2018

Persuasive Writing

Statement of Facts

Read: Reader, pp. 67-73

Coughlin: pp. 338-345

Statement of Facts Exercise (in class)

THURSDAY, FEBRUARY 8, 2018

Persuasive Writing

Introduction to Discussion Section

Headings

Persuasive Overall Rule

Read: Coughlin: pp. 312-316 (through A. Developing Your Theme)

Reader: pp. 45-57

In-class exercise: Using a theme to create a favorable context. (*100 Exercises for Mastery* Exercise 101)

WEEK 6

TUESDAY, FEBRUARY 13, 2018

Persuasive Writing

Discussion Section (cont'd)

Persuasive Sub-rules and Rule Proofs

Read: Reader, pp. 57-61, Persuasive Rule Exemplar p. 95-97

Coughlin: pp 316-323 (through 2. Developing persuasive case illustrations)

(Exercise 101 in-class examples)

THURSDAY, FEBRUARY 15, 2018

Persuasive Writing

Rule Proofs (cont'd)

Parentheticals

Application

Read: Reader, pp. 62-65, pp. 69, Review *Wilks* pp. 91-95, 96 (Parenthetical Exemplar) and pp. 88-89, Application pp. 65-68

WEEK 7

TUESDAY, FEBRUARY 20, 2018

Texas Citation Rules

Read: Texas Rules of Form (the "Greenbook"), pp. iii-v and 1-9

THURSDAY, FEBRUARY 22, 2018

Texas Citation Rules (cont'd)

Read: Texas Rules of Form, pp. 10-28

WEEK 8

TUESDAY, FEBRUARY 27, 2018

Analysis Revisited/'Persuasive Techniques

Read: Coughlin pp. 325-346

THURSDAY, MARCH 1, 2018

Editing and Polishing

Read: Coughlin pp. 346-350

WEEK 9

TUESDAY, MARCH 6, 2018

Statutory Interpretation

Basic Tools of Statutory Interpretation

Read: Coughlin, Malmud, & Patrick, *A Lawyer Writes*, pp.35-43 (II Reading Statutes), pp. 175-177 (Policy Recorded in Legislative History”) and pp. 181-193

THURSDAY, MARCH 8, 2018

Read: Reader, Statutes and Legislative History Excerpt, pp. 129-126
Tennessee Valley Authority v. Hill – Reader, pp. 137-154

WEEK 10

MARCH 12, 2018 — MARCH 16, 2018 – SPRING BREAK

WEEK 11

MONDAY, MARCH 19, 2018

Writing Assignment #2 due on TWEN at 8 a.m.

TUESDAY, MARCH 20, 2018

MANDATORY CONFERENCES – NO CLASS

THURSDAY, MARCH 22, 2018

MANDATORY CONFERENCES – NO CLASS

WEEK 12

TUESDAY, MARCH 27, 2018

Statutory Interpretation

Exercise: Twardzik v. Funtime Sporting Goods

Read: Statutory Interp. Materials for Twardzik v. Funtime – Reader, pp. 167-176, Oral Argument
Pointers pp.177-181

****Arguments for Funtime and Arguments for Twardzik Due in Class**

THURSDAY, MARCH 29, 2018

Statutory Interpretation

Exercise: Twardzik v. Funtime Sporting Goods (cont'd)

Discussion of Arguments

WEEK 13

MONDAY, APRIL 2, 2018

What's Due: Writing Assignment #2 Final (submit via TWEN using exam number)

TUESDAY, APRIL 3, 2018

Deference to Agency Interpretation

Read: Chevron v. NRDC – Reader, pp. 155-169

Coughlin: p. 191("b.) Agency Interpretations and regulations")

THURSDAY, APRIL 5, 2018

Statutory Interpretation Oral Argument Exercise

Read: Reader pp. 166-199,

WEEK 14

Assign Partners for Oral Argument Exercise

TUESDAY, APRIL 10, 2018

QUIZ: Statutory interpretation

THURSDAY, APRIL 12, 2018

Sharon Carpenter Exercise

Read: Reader 200-226

Use the statutory interpretation chart posted on TWEN to organize the information from your readings and to analyze Carpenter's situation. Bring your chart to class.

WEEK 15

ORAL ARGUMENTS BEGIN THIS WEEK

TUESDAY, APRIL 17, 2018

Oral Arguments in Class

THURSDAY, APRIL 19, 2018

Oral Arguments in Class

WEEK 16

TUESDAY, APRIL 24, 2018

Finish Oral Arguments

Summer Preview

Have a great summer!