

Appellate Litigation

**Professor David George
Texas Southern University
Thurgood Marshall School of Law**



**Fall 2017
Tuesdays & Thursdays
5:30 p.m.
Room 206**

I. Welcome

Welcome to Appellate Litigation. In this class, you will have the opportunity to refresh the skills you learned in Lawyering Process, strengthen your writing, learn how to write an appellate brief, and develop your oral argument skills

II. Specific Course Goals

This class is based around four learning objectives:

1. Professionalism
2. Tools of the Trade
3. The Brief
4. Appellate Procedure

The class lectures and assignments will be focused on working towards mastery of these objectives.

A. Professionalism

This is a professional school and you are entering a learned profession. A primary objective of this course is to help you understand the duties and responsibilities of your chosen profession.

B. Tools of the Trade

Lawyering is a craft, and as apprentice lawyers you will learn to use the tools of your trade. We will focus on increasing your skills in legal analysis, persuasive writing, oral argument, and other areas. These are skills you will use throughout your legal career, so it is important to begin to master them.

C. The Brief

Your main project in this class will be drafting an appellate brief. The skills you develop drafting the brief will apply throughout your career, even if you do not end up practicing appellate law. The brief will let you hone the skills you are learning.

D. Appellate Procedure

By the end of the course, you will have a good understanding of the appellate system and its procedural rules. While we focus on civil appeals in the Texas Courts of Appeals, we will devote lectures to criminal appeals and Supreme Court practice.

III. Reading

The required textbooks for this course are:

- Bryan A. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts*, 3rd Edition
- *O'Connor's Texas Civil Appeals* (2017)

The assigned readings are indicated on the class schedule. For some classes, I will provide additional reading material. That may include statutes, cases, articles, or other material. I will make it available on the course's TWEN site at least one week before the class.

You will be required to know and use proper citation form using the current Bluebook and Greenbook. They are:

- *The Bluebook, A Uniform System of Citation*, 20th Edition
- *The Greenbook, Texas Rules of Form*, 13th Edition

IV. Assignments

A. Brief

We will work with a common fact pattern for the three brief-related exercises. Half of the class will represent the appellant, and half will represent the appellee (I will randomly assign sides). The fact pattern will involve a civil appeal to the First Court of Appeals in Houston. It will be an appeal of a summary judgment in a personal-injury case where the defendant obtained summary judgment under Texas Civil Practice and Remedies Code Chapter 95.

1. Case Identification Exercise

The first exercise will involve researching the law regarding the first issue for the brief. You will identify the three best cases or other authorities supporting your position and write a few sentences for each one, explaining why you chose it. It will be due at the beginning of class on Tuesday, September 19, 2017.

2. Starter Brief

The Starter Brief will be limited to the first issue (the one you researched for the Case Identification Exercise). It will contain the cover page, identity of parties and counsel, statement of issues, argument for issue one, signature block, and certificate of service. It will be due at the beginning of class on Tuesday, October 10, 2017.

3. Complete Brief

The Complete Brief will include both the first issue from the Starter Brief and the second issue. It will include all parts that are required by the Texas Rules of Appellate Procedure. The Complete Brief will be due at the beginning of the class on Thursday, November 30, 2017, which is the last day of class.

B. Oral Argument

1. Oral Argument Observation

You will observe two oral arguments (one in person and one recorded) and provide Oral Observation Argument Reports for each one. The live oral argument can be at either the First or Fourteenth Courts of Appeals. The recorded oral argument can be either the United States Supreme Court or Texas Supreme Court. You can do the live and recorded arguments in either order.

For each oral argument, you will read the parties' briefs, then listen to the argument. For the recorded argument, you will then read the court's opinion. For each argument, you will provide an Oral Argument Observation Report that provides information regarding the oral argument you observed and answers several questions regarding the oral arguments. I will provide a form for you to use. The questions you will answer are:

- After reading the briefs and before listening to oral argument: What is one question you think the judges will ask at oral argument?
- After oral argument: Did the judge ask your question, how was it answered. If not asked, why do you think not?
- After oral argument: How do you think the court will decide the case?
- After reading the opinion: How did the court decide the case?

The first Oral Argument Observation Report is due at the beginning of class on Thursday, October 24, 2017. The second Oral Observation Argument Report is due at the beginning of class on Tuesday, November 14, 2017. We will discuss your oral argument observations (as well as your oral argument) on Tuesday, November 21, 2017.

The First and Fourteenth Courts of Appeals' oral-argument schedules are available at:

<http://www.search.txcourts.gov/Submission.aspx?coa=coa01&s=c>
<http://www.search.txcourts.gov/Submission.aspx?coa=coa14&s=c>

Those pages will give you access to the parties' briefs.

Video recordings of the Texas Supreme Court's oral arguments are available at <http://www.texasbarcle.com/CLE/TSC.asp>.

The briefs can be found by searching the case number on the Texas Supreme Court's home page: <http://www.txcourts.gov/supreme/>.

Audio recordings of the United States Supreme Court's oral arguments are available at <https://www.oyez.org/cases/2017> and

https://www.supremecourt.gov/oral_arguments/argument_audio/

The briefs can generally be found on Westlaw.

2. Oral Argument

You will participate in oral argument of the brief. Argument will be done in teams of two people each, with two teams arguing against each other. I will assign the team members and which teams argue against each other. On each team, one student will argue issue one and the other will argue issue two. You can decide among yourselves who will argue which issue, or I will decide if no agreement can be reached. You will argue the side that you briefed. Each student will argue for 10 minutes (with the appellants able to reserve up to 3 minutes for rebuttal). So the total argument time will be 40 minutes. While students will argue together, students will be judged solely on their individual performance.

Oral arguments will take place on during the day on **Saturday, November 18, 2017**. If you cannot attend oral arguments that day, you may qualify for oral argument at another time. **You must, however, let me know your reason and your need for accommodation on or before Tuesday, November 2, 2017.**

We will discuss your oral argument (as well as your oral argument observations) on Tuesday, November 21, 2017.

V. Late Assignments

Please turn assignments in on time in order to avoid serious damage to your grade. When planning out your writing schedule, consider following this rule of thumb used by some attorneys: Take the amount of time that you think a writing assignment will take, then double it. This guideline works, because writing invariably takes longer than we think. *Please allow time for computer crashes, lost backpacks, traffic jams, and the like.*

In practice, lateness has serious consequences. Similarly, lateness will have serious consequences in class. If an assignment is turned in less than one hour late, 10% of the available points will be deducted before any other deductions. If an assignment is turned in more than one hour late but less than twenty-hour hours, a further 25 % will be

deducted before any other deductions. The same rule will apply for subsequent days, until no points remain.

VI. Grade Components

The following components make up your final grade in this class:

Assignment	Possible Points	%
Case Identification	50	5%
Starter Brief	150	15%
Oral Argument Observation Report 1	50	5%
Oral Argument Observation Report 2	50	5%
Oral Argument	150	15%
Complete Brief	500	50%
Class Participation	50	5%
Total	1000	100%

VII. Professionalism and Mutual Respect

In order to encourage learning and professionalism, our classroom is a place of mutual respect for the goals that each person has in the class. Questions are encouraged. If you do not wish to ask a question in class, by all means stop me after class or email me to set up a time to speak. You may also email me your questions. If a question's answer would be useful to other students, I will email the question and answer to the class, without attribution.

Classroom conduct is of course a matter of common sense. Sometimes students behave in distracting behavior because they do not realize the effect their actions have on other students. In the practice of law, however, lawyers frequently have to maintain their composure or appear to be interested, even when they feel like expressing negative emotions or are in fact not interested at all. The law school classroom is an excellent place to practice these skills. **To that end, please do not engage in the following behaviors during class: side conversations, texting, surfing the internet, leaving class and returning (unless going to the bathroom), eating meals, or any engaging in other distracting behavior. Please do not wear headphones to class.**

Appellate Litigation - Fall 2017 - Professor George

Revised 9/7/17

Week	Day	Date	Topic	Reading - Garner	Reading - O'Connor's	Reading - Other	Due at Beginning of Class
1	Tuesday	August 22	Overview: What is Appellate Litigation? – The Subject & The Class				
1	Thursday	August 24	Appellate Procedure: What is Appealable?		Pages 4-26		
2	Tuesday	August 29	Cancelled - Hurricane Harvey				
2	Thursday	August 31	Cancelled - Hurricane Harvey				
3	Tuesday	September 5	Tools of the Trade: The English Language I: Grammar	Tips 51-54, 57-62, 96			
3	Thursday	September 7	Tools of the Trade: Preserving Error		57-62	TRCP 324; TRAP 33, 44	
4	Tuesday	September 12	Appellate Procedure: Initiating the Appeal		203-223	TRCP 329b; TRAP 25, 26, 32, 33, 34, 35, 37	
4	Thursday	September 14	The Brief: Standard of Review	Tip 95	Pages 62-65		
5	Tuesday	September 19	Tools of the Trade: Legal Analysis	Tips 2-10, 99			Case Identification Exercise
5	Thursday	September 21	Tools of the Trade: Interpretation	Tip 94		TBD	
6	Tuesday	September 26	The Brief: Issues	Tips 11-13, 85			
6	Thursday	September 28	The Brief: Statement of Facts			TRAP 38	
7	Tuesday	October 3	The Brief: Argument I: Structuring the Argument at the Macro Scale: Sections and Sub-Sections	Tips 14-19			

Week	Day	Date	Topic	Reading - Garner	Reading - O'Connor's	Reading - Other	Due at Beginning of Class
7	Thursday	October 5	Tools of the Trade: Designing Appealing Documents	Tips 63-69, 90-91			
8	Tuesday	October 10	Appellate Procedure: Criminal Appeals (Guest Speaker: David Isaak of Smyser Kaplan & Veselka LLP)				Starter Brief
8	Thursday	October 12	Tools of the Trade: Editing and Revising I	Tips 27-36			
9	Tuesday	October 17	Professionalism: What Supervising Lawyers Look For in a Lawyer				
9	Thursday	October 19	Tools of the Trade: Persuasive Writing I	Tips 70-74, 88-89, 82, 97-98			
10	Tuesday	October 24	Tools of the Trade: The English Language II: Word Choice	Tips 44-50, 55-56			Oral Argument Observation Report 1
10	Thursday	October 26	The Brief: Argument II: Structuring the Argument at the Micro Scale: Sentences and Paragraphs	Tips 20-26, 86-87			
11	Tuesday	October 31	Appellate Procedure: Mandamus		Pages 378-394	TRAP 53	
11	Thursday	November 2	Appellate Procedure: Federal Appeals			TBD	
12	Tuesday	November 7	Tools of the Trade: Oral Argument I: Preparation			TRAP 39; TBD	

Week	Day	Date	Topic	Reading - Garner	Reading - O'Connor's	Reading - Other	Due at Beginning of Class
12	Thursday	November 9	Professionalism: What Judges Look For in a Lawyer (Guest Speaker: Justice Bill Boyce of the 14th Court of Appeals)	Tip 1			
13	Tuesday	November 14	Tools of the Trade: Persuasive Writing II	Tips 75-84, 92-93			Oral Argument Observation Report 2
13	Thursday	November 16	Tools of the Trade: Oral Argument II: Presentation			TBD	
13	Saturday	November 18					Oral Argument
14	Tuesday	November 21	Tools of the Trade: Lessons Learned: Oral Argument				
14	Thursday	November 23	No Class – Thanksgiving Holiday	Football	Turkey	Pie	
15	Tuesday	November 28	Tools of the Trade: Editing and Revising II	Tips 37-43			
15	Thursday	November 30	Appellate Procedure: Supreme Court Practice		Pages 315-347	TRAP 53-60	Complete Brief
15	Friday	December 1	Tools of the Trade: Lessons Learned: The Brief				
16	Monday	December 4	Professionalism: Giving Back	Tip 100			

FALL SEMESTER 2017 (SEVENTY DAYS OF CLASSES)
REVISED 09-05-17

Orientation	Monday – Friday	August 14 – 18, 2017
First Day of Class	Monday	August 21, 2017
Last Day to Add/Drop Classes	Friday	August 25, 2017
Labor Day (NO CLASS)	Monday	September 4, 2017
<i>Purge of all unpaid course selections</i>	Thursday	September 20, 2017
Mid Term Examinations	Monday – Friday	October 16-20, 2017
*Legislative Monday	Friday	November 10, 2017
Thanksgiving Holiday	Thursday-Friday	November 23-24, 2017
Last Day of Classes	Thursday	November 30, 2017
Last Day to Drop a Class	Thursday	November 30, 2017
1st Year Professors' Grades Due	Thursday	November 30, 2017
*Legislative Tuesday	Friday	December 1, 2017
*Legislative Wednesday	Saturday	December 2, 2017
*Legislative Thursday	Monday	December 4, 2017
*Legislative Friday	Tuesday	December 5, 2017
Reading Day (NO CLASS)	Wednesday	December 6, 2017
Final Examinations	Thursday-Friday	December 7-15, 2017
University Commencement	Saturday	December 16, 2017

*** Legislative Days are make-up days from Hurricane Harvey August 28, 2017 – September 1, 2017.**