

Appellate Litigation

Professor Misty Hataway-Coné

Thursdays—5-6:40 p.m.

“Law and order exist for the purpose of establishing justice and when they fail in this purpose, they become the dangerously structured dams that block the flow of social progress.”

-Rev. Martin Luther King, Jr.

“All things are ready, if our mind be so.”

--Williams Shakespeare, Henry V

“You have brains in your head. You have feet in your shoes. You can steer yourself any direction you choose. You’re on your own. And you know what you know. And YOU are the one who’ll decide where to go.”

~Dr. Seuss

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. After first refreshing your writing, research, and citation skills, we will work through a variety of writing assignments. You are also asked to view a live appellate argument.

II. Learning Through Writing, Feedback, and Re-writing

The main goal of this class is for your legal writing to be significantly better at the end of the semester. Unfortunately, there are no shortcuts in legal writing. To advance in legal writing, you and I must both engage in hard work. First, you must complete the daily reading and other daily assignments. These may include viewing Ten Minute Mentor videos on the Texas Young Lawyers Association website, www.tenminutementor.com. You may be quizzed on these assignments. If you miss class and wish to receive a quiz grade other than zero, please email me regarding your absence (within 24 hours after the quiz) and arrange to take the quiz at the next available office hours. ***Quizzes must be made up at the next available office hours in order to avoid a grade of zero on that quiz.***

III. 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 come by during office hours. You may also email 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 for the most part a matter of common sense. Sometimes students engage 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 engaging in any other distracting behavior.

IN ADDITION, THERE ARE NO ORAL EXTENSIONS OR EXCUSES. ANY EXCUSE OR EXCEPTION TO ANY RULE MUST BE HANDLED IN WRITING, BY EMAIL.

IV. Specific Course Goals

The following are some of the goals for this class. Upon completion of the Appellate Litigation course, students should be able to:

A. Over-arching goal: Demonstrate critical thinking skills at numerous decision-points over the course of an appeal

- Assess legal authority: discern the most relevant and persuasive authorities; judge how much to discuss each authority;
 - Decide how to deal with negative authority or perhaps when to ask a court to overrule established precedent
 - Decide which of the opponent's arguments should be responded to and which should not
- B. Develop the following specific skill outcomes in sequence of the course
- Understand the context of an appeal
 - Understand the appellate court's jurisdiction
 - Learn how to locate rules and internal operating procedures of the applicable appellate court
 - Gain exposure to the concept of preservation of error--which issues in the record can be raised
 - Gain exposure to the appellate decision-making process from the court's perspective
- C. Understand that there are various standards of appellate review that affect the appeal
- D. Prepare arguments
- Find and select relevant precedent
 - Distinguish between arguments of varying strength
 - Allocate brief space to issues that will be critical to the appellate panel
 - Understand appellate briefing schedules
 - Understand the differences between appealing and responding to an appeal
 - Recognize and plan for post-appeal proceedings such as petitions for reconsideration or rehearing en banc
- E. Write arguments effectively
- Synthesize legal rules
 - Draft effective point headings
 - Describe precedent in a manner that is both accurate and pertinent to arguments that follow
 - Apply precedent to client facts
 - Cite when appropriate, using correct citation format
 - Use standard, formal legal writing
- F. Plan and prepare for oral argument
- Understand the relative weights placed by appellate courts on written versus oral advocacy
- G. Understand decorum and ethical conduct in the appellate context
- View live oral arguments
 - Gain personal contact with judges and court staff so as to feel comfortable in court
- H. Understand how to continue to evolve as a writer

- Understand your own writing and analysis strengths and weaknesses and benefit from suggestions on how to address them going forward

V. General Information

A. Contact Information

Office: Adjunct Office
Office Phone: Will Update
Email: MCone@spurlocklaw.com

Office Hours: You may contact me at my law office, 281-548-0900 during traditional business hours. You can email and we can set up a time to meet before class on Thursdays.

You can contact me by email any time--I will respond to your email as soon as possible. If you email me during weekend or evening hours, my response may be delayed by up to one business day.

B. Textbooks

The textbooks for this course are:

Oates, Enquist & Krantz, *Just Briefs*, 3rd Edition
The Bluebook, A Uniform System of Citation, 20th Edition
The Greenbook, Texas Rules of Form, 12th Edition

The recommended textbooks for this course are:

O'Connors Texas Civil Appeals (If you decide to purchase this book, contact Jones McClure publishing directly and state that you are a law student in order to receive the best price.)

You need not buy these unless you are looking for extra resources. If you have particular goals for your legal writing, I can recommend other books. Also, from time to time throughout the semester, I will hand out supplementary photocopied materials. I strongly suggest that you get a large three-ringed binder to keep all of your class materials organized.

IF I HAND OUT OR EMAIL YOU AN ARTICLE, PLEASE HOLD ON TO THE PAPER AND BRING IT BACK TO CLASS UNTIL WE ARE FINISHED WITH IT. IF I TAKE THE TIME TO SEND YOU A PAPER—YOU ARE EXPECTED TO READ IT.

VI. 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.

VII. Grade Components

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

- Writing Assignment 1 (Who am I/Help me to Help you) 100 points
- Writing Assignment 2 (Substantive Outline of brief): 50 points
- Writing Assignment 3 (Argumentative Statement of Facts): 50 points
- Writing Assignment 4 (Statement of Issues): 50 points
- Writing Assignment 5 (Complete Brief): 500 points
- Quizzes 50 points
- Participation¹/Attendance: 100 points
- Court Experience w/Paper: 100 points

Court Experience Assignment: You should listen to and/or attend a live appellate argument during the semester. We will discuss this requirement in class.

Hataway-Coné

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Fall 2019

Please note that these dates and assignments might change, according to the pace of the class discussion and other considerations.

Wk.	Class	Topic	Reading –To be completed before class)	What’s Due?
1	8/22	Introduction/ Overview of Appellate Rules of Procedure Discussion of semester long appeal project/ selection of partners/discussion of legal issues.	No assignment. Enjoy!	Contact information and email addresses due to Prof. Coné by the end of class.
2	8/29	What is an Appeal?/ What is an Appeal?/Differences between an	Prior to class, please view the following video or listen to	Identification of Partner and

¹ Your participation grade includes your participation in “in class” oral arguments with your partner.

		<p>appeal and a mandamus/ Interlocutory or Accelerated appeal v. Traditional Appeal</p> <p>Discussion re: legal issues involved in appeal assignment.</p> <p>Top Ten List—Texas Appeals—</p>	<p>the podcast: www.tenminutementor.com TOP TIPS ON APPELLATE COURT PRACTICE Category: Appellate Speaker: Justice Pemberton</p> <p>Read: Reasons for Reversal in the Texas Courts of Appeals, by Liberato and Rutter—I will provide by email</p> <p>Read the Top Ten List— Texas Appeals</p>	<p>selection of Appellant/App ellee must be turned in at the beginning of class. You may email it to me.</p> <p>Writing Assignment 1 is due!</p>
3	9/5	<p>Discussion re: requirements for briefs and differences between deadlines and requirements for accelerated vs. traditional appeals;</p> <p>Discussion re: structure of appellate brief and overview of effective advocacy in writing</p>	<p>Prior to class, please view the following video or listen to the podcast: www.tenminutementor.com WRITING AN EFFECTIVE APPELLATE BRIEF Category: Appellate Speaker: Doug Alexander</p> <p>We will work on outline of brief in class.</p>	<p>You will have your first QUIZ. Top Ten List –</p>
4	9/12	<p>Introduction to the full brief; Discussion of themes, scope of briefing and research and related issues.</p>		
5	9/19	<p>Discussion re: research, the appellate record and proper citation.</p> <p>Signals and Parentheticals</p> <p>Citation Day: Please bring</p>	<p>Handout from class</p>	

		Bluebook and Greenbook to class		
6	9/26	Discussion re: effective statement of issues, statement of facts and differences between the Statement of the Case and Statement of Facts.	Handout from class; <i>Just Briefs</i>	Writing Assignment 2 (Substantive Brief Outline) is due by the beginning of Class. Bring Substantive Brief Outline to class for self-edit; turn in hard copy for complete grade
7	10/3	Please bring 5-7 “key” cases to class that you could use in your appellate brief. We will work on Statement of Issues in class.		
8	10/10	Statement of Facts Issue Statement/Statement of the Case	<i>Just Briefs</i> Handout from class	Writing Assignment 3—Statement Of Issues is due
9	10/17	Summary of the Argument and Standard of Review	Handout from class <i>Just Briefs</i> Greenbook/Bluebook	Writing Assignment 4—Statement of Facts is Due

10	10/24	The Importance of the Argument/Effective Use of Headings/Parentheticals/Citations /Citational Footnotes	Citation day in class Review new problem; research applicable cases	
11	10/31	Making arguments; Oral argument skills	Handout from class Prior to class, please view the following video or listen to the podcast: www.tenminutementor.com ORAL ADVOCACY Category: Appellate Speaker: James Haltom	
12	11/7	Appellate Advocacy—refining your arguments	TBA	Your written assessment of the oral argument you attended is due by the beginning of class
13	11/14	Appellate Advocacy—refining your arguments; Keys to making effective arguments.	TBA	
14	11/21	In-class oral arguments as needed; discussion re: oral arguments students attended; wrap up of course materials.	None. Enjoy!	Writing Assignment 5—Complete Brief With Any Appendix, Is Due.

Weekly readings will be assigned. I will update everyone by email with an updated syllabus. Due to my practice, it is imperative that we utilize e-mail for class communications. I will be sharing materials that are discussed in class, after class. So please monitor your emails regularly.