

Advanced Appellate Advocacy

LAW 5609 – Fall 2022

Course Syllabus

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1. Course Instructor and Contact Information

Your instructor for this course is Professor Jeff Brooks. My email address is jeffbrooks@lsu.edu. I do not hold regular office hours; all meetings with me are by appointment only. To schedule a meeting with me, please select a date, time, and meeting type (online or in person) using my Calendly link, <https://calendly.com/jeffbrooks>.

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Meetings will be held in my Law Center office, Room W-155, which is located on the ground floor of the “Old Building”, near the LSU Law Clinic.

2. Course Description and Learning Outcomes

This experiential simulation course will cover the applicable rules and procedures of state and federal appellate practice, mechanics of perfecting and taking appeals, preparation of writ applications, applying the various standards of review, working with a full and complex record on review, advanced techniques for organizing and writing a brief, and advanced instruction on the strategy and process of oral argument. Students will be required to develop a full record on appeal, research and write a full appellate brief and accompanying motions, and conduct a full appellate argument.

In learning the skills necessary for effective appellate practice, students in this course will develop, write, and file, a complete appellate brief and submit oral arguments to the United States Court of Appeals for the Fifth Circuit in a hypothetical civil action on appeal from the United States District Court for the Middle District of Louisiana. Half of the students in this course will represent the hypothetical appellant, while the other half will represent the hypothetical appellee.

Over the course of the semester, students will:

- (1) Learn about the jurisdictional and procedural requirements of federal appellate practice, including interlocutory appeals, standards of review, and extraordinary writs, with reference to Louisiana appellate practice where appropriate,
- (2) Prepare the initial documents to file an appeal in a hypothetical appeal in a civil action to a U.S. Court of Appeal,
- (3) Develop a full record on appeal, working through a lower court record to identify and extract the necessary facts and procedural history for a successful appeal,
- (4) Participate in federal appellate motion practice; preparing, submitting, and arguing where necessary motions appropriate to the appeal they are preparing,
- (5) Research and write a full multi-issue federal appellate brief based on the record on appeal created in the class,

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- (6) Offer a full oral argument to a panel of experienced federal appellate practitioners and sitting judges.

3. Materials and Resources

a. Required Textbook – Two Options

I require a textbook for this course. However, I recognize that the cost of textbooks can pose difficulties for many students. To that end, you have the option to use my required book (*Winning on Appeal*) OR use a text available to you for free online via your LSU-Law-issued Bloomberg Law subscription (BNA's *Federal Appellate Practice*).

For each week's required readings, you can choose to complete the readings posted from either *Winning on Appeal* **or** *Federal Appellate Practice*. The content of both works is similar but not identical, and I will cover all necessary information from both sources in my lectures. It is 100% your choice which source you read for any and all assignments – you will be fully prepared for class either way.

i. ***Textbook Option #1: Winning on Appeal***

Tessa Dysart & Hon. Leslie A. Southwick, *Winning on Appeal: Better Briefs and Oral Argument*, (3rd ed. 2017), ISBN 9781601567246

- Available for purchase from NITA in softcover and as an e-book at <https://www.nita.org/publications/books-dvds/Winning-on-Appeal:-Better-Briefs-and-Oral-Argument-Third-Edition->
- Available new and used on Amazon.com at <https://www.amazon.com/Winning-Appeal-Tessa-Dysart-dp-1601567243/dp/1601567243/>

ii. ***Textbook Option #2: Federal Appellate Practice***

Mayer Brown LLP, *Federal Appellate Practice*, (3rd ed. 2018), available at: https://www.bloomberglaw.com/legal_search/browser/471816

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- This work is available on Bloomberg Law at the direct link above or by searching “BNA Federal Appellate Practice” in the Search box. I recommend setting the Table of Contents as a “Favorite” for easy access.
- If you do not remember your Bloomberg Law access credentials, and the “Reset Password” option does not work for your @lsu.edu email address, contact the LSU Law Library at lawreference@lsu.edu.

b. Additional Course Materials

i. *Legal Citation Manual*

I expect all citations in all written submissions to be done in a manner consistent with the Uniform System of Citation set out in *The Bluebook: A Uniform System of Citation* (20th or 21st ed.). If you do not have easy access to the Bluebook, you are encouraged to reference the free open-source “Indigo Book”, which can be found at: <https://law.resource.org/pub/us/code/blue/IndigoBook.html>.

ii. *Federal Rules of Appellate Procedure*

All materials you submit in this course must generally comply with the Federal Rules of Appellate Procedure, as modified by the U.S. Court of Appeals for the Fifth Circuit. You can access these rules at:

<http://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/rules/federalrulesofappellateprocedure>.

Please note that I will be adapting some of these rules for your final brief submission; this document can be found on the Moodle course page.

4. Course Outline and Schedule

Week	Topic	Work Due This Week
Week 1 (Aug. 15-19)	Basics of Federal Appellate Jurisdiction	None
Week 2 (Aug. 22-23)	Starting Your Case	Cover Page and Appearance Form
Week 3 (Aug. 29-Sept. 2)	Discretionary Appeals	None

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Week	Topic	Work Due This Week
Week 4 (Sept. 5-Sept. 9)	Issue Preservation	Statement of Jurisdiction
Week 5 (Sept. 12-16)	Planning the Argument	Statement of Issues Presented for Review
Week 6 (Sept. 19-23)	Standards of Review	Research Plan
Week 7 (Sept. 26-30)	Developing the Argument	Standards of Review
Week 8 (Oct. 3-7)	Presenting the Facts	None
Week 9 (Oct. 10-Oct. 14)	Synthesis and Storytelling	Point Headings of the Argument
Week 10 (Oct. 17-Oct. 21)	Tools of the Craft	None
Week 11 (Oct. 24-Oct. 28)	Preparing for Oral Argument	Summary of the Argument, Argument, and Conclusion
Week 12 (Oct. 31-Nov. 4)	Finalizing the Brief	Statement of the Case
Week 13 (Nov. 7-Nov. 11)	Delivering Oral Arguments	Individual Meetings
Week 14 (Nov. 14-Nov. 18)	Practice/Final Oral Arguments	Practice Oral Arguments and/or Final Oral Arguments
Week 15 (Nov. 21-Nov. 25)	Final Oral Arguments	Final Oral Arguments
Saturday, December 10, 2022 before 11:59 p.m.	Final Brief Submission Deadline	Final Brief Submission

5. Assessments and Grading

Your final grade in this course will be based on the following:

- 80% - Final Appellate Brief
- 20% - Final Oral Argument

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Your final grade will be converted from a 100 point scale to a 4.0 Grade Point Average utilizing the [Mandatory Grading Standards](#) outlined in the Law Center's Online Catalog. More detailed grading information will be discussed during the semester in class.

a. Appellate Brief (80% of Final Grade)

Over the course of the semester, each student will research and write a full appellate brief on the merits in a hypothetical case. Each student will be randomly assigned one of the parties to represent in the case.

A complete final appellate brief that complies in all respects with the briefing guidelines for this course adapted from the Federal Rules of Appellate Procedure (available on Moodle) must be turned in by each student via Moodle no later than **Saturday, December 10, 2022, at 11:59 pm.**

In addition, you will be required to submit draft sections of the appellate brief on Moodle as set out in the chart above. These drafts will **not** be graded; students will receive feedback on each section draft submitted from me. Submission of all draft sections is **mandatory** – I will not grade a final brief for a student who did not timely turn in all draft sections. Accordingly, failure to timely submit all draft sections will result in a failing grade. You cannot take an absence in lieu of submitting a draft section.

Drafts must be uploaded to the appropriate folder on Moodle no later than 11:59 pm on Monday of each week.

A note on what “draft” means: this is an upper-level law school course designed to refine and hone your appellate brief-writing skills. When you submit a draft in this course, it should reflect in both form and content a draft you would feel confident submitting for review to a supervising attorney or to a judge for whom you are a law clerk. Your drafts should reflect substantial effort; they should be proofread, spell-checked, and edited; and they should represent your best work at that point in your progress through the course materials and your case research. I do not expect your drafts to be perfect – that defeats the purpose of drafting. However, I do expect them to demonstrate substantial effort.

Submitting a draft that does not meet the above simply to meet a deadline will not be considered sufficient to satisfy your draft submission obligation.

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If you feel you need additional time to adequately complete a draft section (and you possess the requisite good cause) you can and should submit a motion for extension of time, as outlined in Section 6(b).

b. Final Oral Argument (20% of Final Grade)

Each student must present a full appellate oral argument to a panel consisting of guest attorney judge(s), sitting judge(s), and/or Prof. Brooks. The oral arguments will be held live in person in one of the Law Center's courtrooms. The precise dates and times will be set by Prof. Brooks based on availability of all respective parties. Students will be randomly paired with a classmate for the final oral arguments, but will not be graded against each other's performance. Students cannot take an absence in lieu of their final oral argument.

6. Additional Policies and Expectations

a. Attendance Policy

This class meets twice per week, from 1:50 - 2:50 on Mondays and Wednesdays in Room 301. Regular and punctual in-person class attendance is required. This is an experiential learning course, and some of our regular class sessions will be cancelled to allow time for live skills performance and feedback. Accordingly, you can miss no more than 5 (five) regularly scheduled class meetings. Students cannot take an absence in lieu of their final oral argument.

b. Motion for Extension of Time

In the spirit of the Fifth Circuit's Local Rule 26.2, which requires "timely filing of all papers within the time period allowed by the rules, without extensions of time, except for good cause," late submissions of any of the required draft brief sections will generally not be permitted. However, an extension of time may be obtained via written motion, to be submitted via email to Professor Brooks at least 12 hours before the posted due date of any section of the brief. The motion must demonstrate "good cause" for such an extension. See *Nelson v. James*, 722 F.2d 207, 208 (5th Cir. 1984) ("inattendance to office chores and good faith mistakes are not sufficient to show good cause").

No extensions of time will be granted for the final brief submission!

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c. Academic Integrity

You are expected to comply with the Law Center Code of Student Professional Responsibility. Lying, cheating, plagiarism, and other forms of student misconduct are prohibited. Compliance with the Code of Professional Responsibility requires learners to take ownership of their individual work for individual assignments and assessments. Students who violate the Code of Professional Responsibility will be referred to the Law Center's Associate Dean for Academic Affairs. Violations may result in denial of course credit, a public reprimand, suspension, and/or expulsion from the Law Center. To read more about the Code of Professional Responsibility, visit the [Code of Professional Responsibility](#) page on the Law Center website.

I expect your work product to be 100% your own. You are encouraged to discuss issues and arguments with me and with the Law Center's law librarians. However, you **cannot** share your research or written work with another classmate, nor turn in anything that another student has written as your own work. You **cannot** utilize or read any portion of another student's brief, including briefs from students who took this course in prior semesters/years, at any point in the semester. You **cannot** have other students, professors, or practitioners provide any substantive assistance in the writing or editing of your brief or the preparation or presentation of your oral argument (aside from the research assistance from the Law Center's law librarians permitted above and edits from me [Prof. Brooks]). **Your written and oral work in this course must be exclusively your own.**

You will receive an outline of arguments prior to your final oral argument – you will not be permitted to exchange briefs.

d. Civility

The [LSU Law Center Principles of Civility](#) requires members of the Law Center to speak and write in a civil, professional, courteous, and respectful manner in all communications. The Principles of Civility apply to online communications just as they do to face-to-face encounters. Please recall that members of the Law Center are required to conduct themselves in a manner that not only preserves their personal dignity and honor, but also that of the Law Center and the legal profession.

e. Diversity Statement

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The LSU Law Center recognizes that our individual differences can deepen our understanding of one another and the world around us, rather than divide us. In this class, people of all ethnicities, genders or gender identities, religions, ages, sexual orientations, disabilities, socioeconomic backgrounds, regions, and nationalities are strongly encouraged to share their perspectives and experiences. If you feel your differences may in some way isolate you from our community, or if you have a need of any specific accommodations, please speak with your professor early in the semester about your concerns and what we can do together to help you become an active and engaged member of our class and community. Please respect your fellow students' opinions and refrain from personal attacks or demeaning comments of any kind.