

LEGAL WRITING II Section 2

TRANSACTIONAL AND ADVOCACY WRITING: Research Memos, Contract Drafting and Negotiation, and Litigation.

Spring 2018

**Tuesdays and Thursdays 11:20 a.m. to 12:35 p.m.
Map Room, first floor of Debevoise Hall**

Professor Marc Mihaly

Office location: 222 Waterman Hall (far end of the 2nd floor hall on the left)
Office Hours: To be announced, and also by appointment.
My Assistant: Stephanie Chiarella (schiarella@vermontlaw.edu; 831-1237)
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Description

This course addresses the nature of legal practice as experienced by most lawyers—largely transactional with some litigation. In the course, you will:

- Improve your writing
- Learn to write predictive/objective memoranda
- Draft contract provisions
- Negotiate contract provisions
- Learn to write advocacy documents—here a trial brief
- Learn to present your position in the context of oral argument
- Practice an MPT

Learning Outcomes

Attached to this syllabus is a list of competencies that VLS strives to instill in all of its graduates. In the attached chart, I have indicated the specific competencies you will gain exposure to, understanding in, or competence in during the semester. At the end of the class, you will be able to:

- Demonstrate professionalism in legal communication.
- Use basic principles of good legal writing to communicate effectively with diverse audiences.
- Explain concepts orally in formal and informal presentations.
- Apply objective writing techniques in a variety of factual and legal scenarios.
- Demonstrate persuasive writing techniques to influence an outcome.
- Employ techniques for time-management, self-reflection, feedback, and collaboration necessary for academic study, bar exam, and professional practice.

See the attachment for more detail.

The Major Writing Assignments and Simulations

The readings and a few exercises focus on writing well, with some work on grammar and a brief review of legal research and citation form. The setting for the major assignments here is land use at the municipal level, with examples drawn from real life in San Francisco or other cities. The major assignments are:

- A short memo to the San Francisco Mayor (but that will also be read by his counsel and others) defining the issues arising around a stumbling block to a major negotiation process, followed by your proposed solution and contract language.
- An advice memo to your client, one of either the City Attorney of Newtown, Maryland or Castellaic, Inc., the major developer involved in a large, new urbanist plan and implementation process. The memo concerns whether your mutual contract for a major new urbanist development can be assigned to other developers over time. Like the last memo, this one will contain your proposed contractual provision.
- A negotiation between the city and developer over the assignment clause in the same contract, and preparation of the resulting text. You will represent the same party you represented when wrote the above advice memo. You will also prepare a brief memo describing the resolution of the issues addressed, or a failure memorandum describing the reasons for remaining disagreement.
- A trial brief addressing selected issues in litigation over a city's approval of a basketball arena. You will be assigned either the approving city or the project opponents as a client. We will conference over your first draft, and then you will prepare a final version.

- Oral argument on the issue in the case you just briefed.

Texts

The texts are:

- Materials and Assignments Posted on TWEN
- THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (20th ed.) ("The Bluebook")
- MEGAN MCALPIN: BEYOND THE FIRST DRAFT: EDITING STRATEGIES FOR POWERFUL LEGAL WRITING (2014)
- BRYAN A. GARNER, THE REDBOOK: A MANUAL ON LEGAL STYLE (3rd Ed., 2013). The Redbook deals with standards for use of grammar, punctuation, spelling, document design, and includes good discussions of editing, and how to write legal documents including research memos, e-mail, briefs, etc. Copies are on reserve at the library.

Course Requirements and Grading

The course requirements are:

- Read the materials, arrive at class prepared, attend and participate. Class participation accounts for part of the grade in the class (see below).
- Complete exercises, memos, and briefs, and prepare and present oral argument.

Grading:

The minor exercises and class participation: 10 percent

The first memo: 10 percent

The second memo: 30 percent

The negotiation and resulting text and memo: 10 percent

The trial brief: 30 percent (based on your final draft)

The oral argument: 10 percent.

You are responsible for submitting assignments at the proper time and place, usually by upload to TWEN. Failure to submit an assignment on time without permission from me will receive a penalty of one grade per day late.

In your writing, you must adhere to the citation form required by A UNIFORM SYSTEM OF CITATION (20th Edition) ("The Bluebook"). Your punctuation and grammar must conform to the applicable provisions of the Bryan Garner's THE REDBOOK: A MANUAL ON LEGAL STYLE. All writing assignments must be submitted in the form of 8 ½ x 11 inch paper and single-spaced with one-inch margins on all sides. The typeface

should be Times New Roman in 12 point. *Make sure to number your pages and put your name in the heading on each page.*

The Vermont Law School Honor Code governs your work and conduct in this class. Whenever you use the words or ideas of another writer, you must acknowledge the original source. If you use the exact words of another person, use quotation marks and cite the name of the author and publication. Cite the original source even if you put another person's ideas in your own words. This rule includes cases and statutes. Never copy from a law review or other written material without indicating the source.

This class requires active and responsible class participation. Consequently, you have an obligation both to yourself and your classmates to come prepared to class, to prepare fully for your role in the simulations and to arrive promptly for all scheduled classes and exercises. There are opportunities to work cooperatively and collaboratively with classmates during the semester. Unless otherwise specified, however, the writing assignments must be your own work product. You may not receive assistance on your writing from anyone else.

Class 1 (Tuesday, January 9). Introduction to the Course and Grammar Diagnostic.

Preparation: Download the Grammar Diagnostic from the TWEN site. It comprises two documents: the diagnostic text and a separate document with just an answer sheet. Make a hard copy of the second, the separate answer sheet, take the diagnostic, using the answer sheet to record your answers by circling the appropriate option. Please use pen. ***Put your name on each page!*** Bring your answers to the first class. You'll correct it there and hand it in. I'll return it to you during the next class.

In class: Introductions, a short exercise, and a discussion of the course of the class.

Class 2 (Thursday, January 11). Short exercise and basics of negotiation.

Preparation: Read Chapters 1 and 2 of BEYOND THE FIRST DRAFT (pp. 3-28)

In class: You will complete in class and upload to TWEN a short first writing exercise—a draft blog piece. We will discuss general issues around negotiation in preparation for the Saturday workshop

NOTE: I will meet with each of you to discuss writing individually over the next two weeks.

Class 2A (Saturday, January 13 (9 a.m. to 4:00 p.m.): Negotiation and Drafting Workshop. This workshop is part of the class. Attendance is required.

Class 3 (Tuesday, January 16). Discussion of the Workshop. Start discussion of the elements of good writing. First Memo and Contract Problem handed out in class.

Preparation:

- Read: Chapter 3, “Vigorous Writing,” pp. 33-58.
- Complete: Two exercises from BEYOND THE FIRST DRAFT, the exercise at the end of chapter 2, at pp. 28-31, and Exercise 1 at the end of chapter 3, at pp. 59-60. These exercises are reproduced in MSWord form on the TWEN site. For the first exercise, download the document, use highlighting, italicizing, and comment insertion to do the exercise, and then upload to TWEN. For the second exercise, use track changes to show your edits, and upload to TWEN.

In class:

- We will go over the exercises from BEYOND THE FIRST DRAFT.
- We will discuss the negotiation and drafting workshop, and negotiation principles.
- I will distribute the first memorandum and contract problem, and make it available on TWEN. ***It's due in a week, by or before 8 a.m. on next Tuesday, January 23rd.*** I'll give you background to the factual context for the memo.

Class 4 (Thursday, January 18). Good writing and good objective/predictive memos

Preparation: Work on your memo. Read THE REDBOOK sections 17 and 18 on research memos and opinion letters, pp. 395-422.

In class: We will discuss the elements of good writing and good legal research memoranda, also called predictive or objective memoranda.

Class 5 (Tuesday, January 23). First assigned memo due and discussed. Second memo assignment distributed.

Preparation: Finish your first memo and upload to TWEN by ***8 a.m. today.***

In class:

- We will discuss the first memorandum and possible contract solutions.
- I will distribute the second memorandum assignment, and discuss the context and background. ***This second objective memorandum is due uploaded on TWEN at or before 8 a.m. on February 15th.***

Class 6 (Thursday, January 25). A legal research refresher.

Preparation: Work on your memorandum.

In class: A refresher on legal research (presented by one of the library legal research professors).

Class 7 (Tuesday, January 30). A citation refresher

Preparation:

- Read Chapter 4 of BEYOND THE FIRST DRAFT, “Clear Writing,” pp. 63-100. Focus primarily on the examples and material in the text boxes.
- Continue to work on your research memorandum.

In class: A refresher on citation (presented by Legal Writing fellow(s)).

Class 8 (Thursday, February 1). A grammar refresher and more on good writing.

Preparation:

- Read Chapter 5 of BEYOND THE FIRST DRAFT, “Polished Writing,” pp. 105-139. As on Tuesday’s assignment, focus on the examples and text boxes.
- Continue to work on your research memorandum.

In class: Further discussion of good writing principles, elements of good research memos, and traps to avoid.

Class 9 (Tuesday, February 6). Professor and TAs Available. No formal class.

Preparation: Continue to work on your memo

No Formal Class: Professor Mihaly, and the TAs, Erin Bennett and Jay Crowder, will be available in the classroom to provide help and answer questions in connection with the transfer-assignment memorandum.

Class 10 (Thursday, February 8). Editing Workshop.

Preparation: Select and bring to class two pages or so of the research memorandum that you’re preparing, either in print form or on your computer.

In class: We will pair off, exchange the drafts, and suggest edits.

Class 11 (Tuesday, February 13). No class

Preparation: You should be in the final stages of your final draft of the second research memo.

No Formal Class: Professor Mihaly and TAs available for assistance.

Class 12 (Thursday, February 15). Second research memorandum due. Commence negotiations on the contract terms.

Preparation: *Your second research memo is due today, uploaded on TWEN by 8:00 a.m.*

In class:

- We will discuss the second research memo issues and results.
- We will discuss the contract negotiation exercise.
- The class will then divide into assigned teams of two each, representing either the City Newtown, Maryland or Castellaic, the developer. These teams in turn will have been assigned to a team for the other party. The teams will arrange internal meetings between themselves, and external negotiation times with their opposite numbers.

Class 13 (Tuesday, February 20). Trial Brief Assignment handed out.

Preparation: Continue to negotiate a contract term with your opposite party negotiators. Complete the negotiations, and if possible start writing up the resulting text and explanation. One of you should be charged with drafting the contract term and should include signature lines and dates of each of the four of you; all of you should review it and sign the term indicating your agreement to its terms. A member of the team opposite the team whose member drafted the contract language should draft the explanatory memorandum, and all should review and edit the memo to everyone's satisfaction.

In class: Trial brief assignment handed out. NOTE: ***Your first draft of the trial brief is due at the close of business on the Friday after your return from spring break, that is on Friday, March 16 at 5 p.m. on TWEN.*** That's a total of 13 school session weekdays from now. I urge you to begin work immediately, or at least after you complete your memo summarizing the results of the negotiation.

Class 14 (Thursday, February 22). Negotiation results due and discussed

Preparation: ***Submit on TWEN by 8 a.m. a joint text of the negotiated contract provision.*** If no agreement reached, submit a memorandum describing the process and the reasons for the failure to agree.

In class: We will discuss the negotiation results. One or two teams will be asked to present. We will discuss any questions relating to the trial brief assignment

Class 15 (Tuesday, February 27).

Preparation: Work on your trial brief.

In class: Discussion of good brief writing.

Class 16 (Thursday, March 1).

Preparation: Work on your trial brief.

In class: Further discussion of good brief writing.

Spring Recess, March 3-11. No class March 6 or 8. Enjoy the vacation, and come back ready to work on and finish your draft trial brief.

Class 17) (Tuesday, March 13). No formal class. Professor and TA's available.

Preparation: Work on your trial brief.

No formal class: Marc Mihaly and the TA's will be present in the classroom and available to help with your draft.

Class 18 (Thursday, March 15).

Preparation: Finalize the first draft of your trial brief. It's due by close of business tomorrow. (Close of business or COB = 5:00 PM).

In Class: Discussion of briefing and litigation strategies.

Friday, March 16. *Your first draft of the trial brief is due today before 5 p.m. uploaded on TWEN*

Class 19. (Tuesday, March 20). Individual Conferences on first draft. No in-classroom meeting

Preparation: Carefully review your first draft. For those with conferences today, your final version will be due on April 3 at 8 am on TWEN.

In class: No formal class.

Class 20. (Thursday, March 22). Individual Conferences on first draft. No in-classroom meeting

Preparation: Carefully review your first draft. For those with conferences today, your final version will be due on April 5 at 8 am on TWEN.

In class: No formal class.

Class 21. (Tuesday, March 27).

Preparation: Work on the final version of your trial brief.

In class: Discussion of oral argument.

Class 22. (Thursday, March 29).

Preparation: Work on final version of your trial brief.

In class: Discussion of oral argument principles and approaches (Prof. Greg Johnson).

Class 23. (Tuesday, April 3). Final Trial brief due for some. Discussion of oral argument

Preparation: If you had a conference on the first draft of your trial brief on March 20, your final trial brief is due today on TWEN by 8 a.m.

In class: More on oral argument. I ask two students to present a dry-run oral argument, and ask for reactions from the class. I'll play the judge.

Class 24. (Thursday, April 5). Final trial brief due for some students. Discussion of oral argument.

Preparation: If you had a conference on the first draft of your trial brief on March 22, your final trial brief is due today on TWEN by 8 a.m. Start work on your oral argument.

In class: Introduction to the MPT by Prof. Joe Brennan.

Class 25 (Tuesday, April 10). Practice MPT

Preparation:

- Read “Approaching the Bench with Confidence,” a law review article on the TWEN site.
- Prepare your oral argument.

In class: Take the practice MPT.

Class 26 (Thursday, April 12). Oral Arguments. No class.

Oral arguments: We will schedule oral arguments this week, likely today, Tuesday, Wednesday and Thursday, depending on student class schedules. You will have 10 minutes per side, and we’ll give feed back for ten minutes to each pair of students.

Class 27 (Tuesday, April 17). Oral Arguments. No class.

Class 28 (Thursday, April 19). Review

Friday, April 20 is for a makeup if necessary.