

**Joann Messina**

## **Grading Criteria for Legal Writing 355:355**

### **Determining Grades for Case Briefs**

Students must distill the case's most important parts and restate them in their own words. A case brief must contain accurate descriptions of the case and demonstrate that students have read and analyzed the case carefully and thoroughly. Case briefs should be brief, but should include relevant details.

Each case brief should include a caption, facts, procedural history, issues, holding, rationale, disposition, and concurring and dissenting opinions (when applicable).

Case briefs should have absolutely no errors of syntax, grammar, consistency, or tense. General sloppiness or failure to adhere to generally accepted principles (such as using active verbs) should also be considered.

### **Determining Grades for the Closed Legal Memorandum**

**Nonpassing work** Nonpassing work on the closed legal memorandum generally exhibits some of the following problems:

Fails to fulfill the basic requirements of the assignment (e.g.: minimal or missing sections - Heading, Statement of Facts, Question(s) Presented, Short Answer, Discussion, and Conclusion).

Develops a personal or irrelevant argument without sufficient reference to the relevant facts, issues, and cases.

Fails to use or cite legal research accurately, or uses inappropriate research.

Presents an overly broad, unfocused, or inappropriately biased argument instead of presenting an objective analysis of the law and the relevant facts.

Fails to predict how an impartial judge would decide the case.

Fails to evaluate the strengths and weaknesses of the opposing sides of a case and explain the result the law seems to require.

Fails to address the specific audience (a law-trained reader who is unfamiliar with the particular law or facts of this case).

Exhibits a high level of error, which interferes significantly with meaning.

**C Range work** C range memos not only address the intended audience's concerns but begin to use or reference legal research to justify an approach to those concerns. Often, C

range memos are making the appropriate gestures without reaching full potential. They may try to offer a Statement of Facts, Question(s) Presented, Short Answer, Discussion, and Conclusion but the analysis is not yet fully sufficient or well executed. The legal research does not actually support the student's contentions. Alternatively, a student may rely too heavily on summarizing cases, rather than applying the law to the particular facts, offering counter-arguments and the reasons those arguments would most likely not prevail. Sometimes a C range memo relies too heavily on summary of legal research.

**B Range work** B range memos have a clear understanding of audience and purpose. They describe the facts and issues accurately and objectively. They conclude that one party is more likely to prevail by providing solid reasoning and analysis of the relevant law and facts. They are generally well presented and relatively error-free.

**A Range work** A range memos have a strong understanding of audience, purpose, the law and facts. They should offer an analysis of the issues raised and the rules suggested by the cases. The student has not included rules or facts that the audience does not need. For each rule stated, the student has included a citation to authority. The student uses strong reasoning and thorough analysis with confidence. There should be very few errors in writing. The writing is concise and precise.

## **Determining Grades for the Oral Argument**

The oral argument is both an "oral draft" of the appellate brief and an opportunity to practice persuasively articulating your strongest arguments to the court. This will include thoroughly and effectively answering the judge's questions. Attitude, delivery, appearance, and level of preparedness (knowledge of the record and supporting cases) will all be considered. One should focus most, though, on how well the presentation gives evidence that the student is prepared to write the final appellate brief for the class, and the judge's comments should focus most on how the student can revise his or her arguments for the appellate brief.

The strongest presentations (A and B range) feature clear organization, convincing logic, excellent references to legal research, clear and compelling arguments, effective answers to judge's questions, and a confident delivery style. Weak (or C range) presentations tend to have scant evidence, few or unclear arguments, poor organization, ineffective or incomplete answers to judge's questions, or an especially problem-ridden delivery.

## **Determining Grades for the Appellate Brief**

**F Range** Reasons why an appellate brief might not pass include:

The appellate brief is plagiarized, in whole or in part. **(Instructors must bring all plagiarism issues immediately to a Writing Program director.)**

The appellate brief does not meet the basic requirements of the assignment (e.g.: missing crucial sections – cover page, table of contents, table of authorities,

question(s) presented, statement of the case, summary of the argument, argument, conclusion).

The student does not use sufficient or appropriate legal research or does not support points with proper Bluebook citations.

The appellate brief is written in the form of a summary of cases, and fails to advocate for the client.

The appellate brief depends largely on regurgitating irrelevant parts of cases.

The level of basic organization interferes dramatically with the appellate brief's purpose. For example, the paragraphs do not follow logically or there is no apparent organizational structure.

Problems of sentence-level error (especially grammar and syntax) are so severe that they interfere with the appellate brief's meaning and appear to be both serious and irremediable without another semester of work. Examples of serious error include sentence fragments, subject-verb agreement errors, or an over-reliance on simple sentences without transitions between them. Less severe (and passable) problems include spelling errors, misused apostrophes, and bad proofreading.

The student does not project a basic competence in writing.

**C Range** Appellate briefs usually fall into the C range if they have some of the following characteristics:

The level of analysis, organization, and logic are sufficient to demonstrate a basic competency.

The appellate brief persuasively advocates for the client and is not merely a report or summary of law and facts.

The arguments show signs of promise even if they are not fully synthesized or fully developed.

The student ignores important difficulties or avoids dealing with salient issues.

The student has not fully engaged with or considered the court's concerns.

Generally, an appellate brief that is competent but fails to organize the legal research and its application to the relevant facts into persuasive and compelling arguments will receive a C+ grade.

The level of error is high or shows signs of general and repeated carelessness.

**B Range** An appellate brief in the B range generally does most of the following to some extent:

Clearly describes and analyzes the issues.

Has a sense of the ways in which the law can be applied to the facts.

Engages (and does not ignore) the difficulties suggested by the law or the facts.

Uses legal research well to make compelling arguments.

Responds to the needs or concerns of the appellate court.

Strives to persuade the court.

Guides the court through the arguments (using good transitions, sign posts, forecasting, etc.).

Has mostly error-free writing.

Often, a B range appellate brief makes strong arguments but is not fully developed or supported by legal research and proper citations.

**A Range** An A appellate brief has all of the qualities of a B appellate brief, and distinguishes itself in at least some of the following ways:

Presents especially original and well-developed arguments.

Demonstrates excellent analysis of the legal research, which is well ordered and properly cited.

Applies the legal research to the facts to articulate clearly and carefully delineated persuasive arguments.

Has almost completely error-free writing.

Has a degree of stylistic polish that exceeds the commonplace (though this alone does not make an A appellate brief, it is often a contributing factor).

Exhibits a remarkably attractive and professional appearance.

The best A range appellate briefs are those in which the writer does more than merely present the law and facts. There should be considerable attempts to interpret the law and facts in a creative, persuasive, comprehensive, and logical way.