

# Effective Coaching of Legal Writing

March 3-4, 2022 / School of Government, Chapel Hill, NC

*Cosponsored by the UNC-Chapel Hill School of Government  
&  
The North Carolina Office of Indigent Defense Services*

## Thursday, March 3

- 8:30am**      **Check-in**
- 9:00am**      **Welcome and Introductions**
- 9:15am**      **Reviewing and Analyzing Legal Writing** [1.25 hrs CLE]  
Ira Mickenberg, Attorney
- 10:30am**      **Break**
- 10:45am**      **Small Group Breakouts – Reviewing and Analyzing Legal Writing** [1.5 hrs CLE]  
Bob Burke, Indigent Defense Trainer  
Ira Mickenberg, Attorney and Consultant  
Mary Pollard, Executive Director, Office of Indigent Defense Services  
John Rubin, Professor of Public Law and Government, UNC School of Government
- 12:15pm**      **Lunch (*provided*)**
- 1:15pm**      **Small Group Breakouts – Reviewing and Analyzing Legal Writing (Cont.)** [2 hrs CLE]  
Bob Burke, Indigent Defense Trainer  
Ira Mickenberg, Attorney and Consultant  
Mary Pollard, Executive Director, Office of Indigent Defense Services  
John Rubin, Professor of Public Law and Government, UNC School of Government
- 3:15pm**      **Break**
- 3:30pm**      **Effectively Providing Written and Oral Feedback and Coaching** [1 hr CLE]  
Bob Burke, Indigent Defense Trainer
- 4:30pm**      **Recess**

## Friday, March 4

- 9:00am**      **Small Group Breakouts – Coaching Legal Writing** [2.5 hrs CLE]  
Bob Burke, Indigent Defense Trainer  
Ira Mickenberg, Attorney and Consultant  
Mary Pollard, Executive Director, Office of Indigent Defense Services  
John Rubin, Professor of Public Law and Government, UNC School of Government
- 11:30am**      **Closing Remarks**  
Bob Burke, Indigent Defense Trainer
- 11:45am**      **Adjourn**

This program will have 8.25 hours of instruction.

**Effective Coaching of Legal Writing**  
**UNC School of Government**  
**March 3-4, 2022**  
**Small Group Assignments**

<b>Grp A</b> <b>Ira Mickenberg</b>	<b>Grp B</b> <b>Bob Burke</b>	<b>Grp C</b> <b>Mary Pollard</b>	<b>Grp D</b> <b>John Rubin</b>
James Grant Jillian Katz Beth Thomas	Emily Davis Lauren Miller Wendy Sotolongo	Joseph Gilliam Beth McNeil Amanda Zimmer	Jacky Brammer Glenn Gerding

### **Feedback and Editing Priorities**

1. Was the Best Issue Raised?
  - Consider:
    - a. Standard of Review
    - b. Factual support for the legal issue (persuasiveness of client's story)
    - c. Possible remedy
2. Is (are) the Issue (issues) Raised Correctly Framed?
3. Has a Persuasive Fact-Based Defense Story Been Used?
4. Is the Legal Analysis Complete and Correct?
5. Do the Language, Images and Organization Used Persuasively Propel the Defense Story?
6. Are There Stylistic Issues (grammar, clarity of language, citations, cop talk, run-on sentences, formatting, etc.)

## Legal Document Cover Sheet

1. All Issues Researched (even if not raised):
  - A.
  - B.
  - C.
  - D.
  - E.
  
2. Summary of Client's Story (Fact-based defense theory) (3 to 5 sentences).

# **Coaching and Reviewing Legal Writing:**



**What are we trying to achieve?  
How can we get there?**

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# What We Will Cover This Morning

1. General principles about coaching and editing –What are we trying to accomplish?
2. Some specifics:
  - When we edit or critique a brief, what should we address?
  - What should we not bother addressing?
  - How should we prioritize our critique?
3. How should we prepare to review a brief or have a coaching session?

# **The Goals of Case Review/Coaching Are:**

- Make sure the brief gives the client his or her best chance of winning
- Help the lawyer learn how to do it better next time

# **The Goal of Case Review/Coaching Is Not:**

- To make the brief look like you wrote it

# General Principles For Editing and Coaching

- It's a dialogue and discussion, not a lecture or a re-write
- Encourage questions
- Answer questions when they are asked
- Don't make the critique personal.
- Always explain why you are suggesting a change
- Don't overwhelm the lawyer with too much advice

# General Principles For Editing and Coaching

- Critique must only address specific, objective things
- Point the lawyer in the right direction and give him the space to find the improvement
- Critique must include suggestions that the lawyer is capable of adopting
- When the lawyer gets things right, let her know
- When the lawyer gets things right, let it be
- Even if you think you could do it better

# What Problems Do We See In Appellate Briefs?

- Misses a winnable legal issue
- Doesn't frame the legal issue properly
- Doesn't use/cite correct law or cases
- Doesn't support the legal issue with facts
- Doesn't develop or use the facts
- Doesn't tell a fact-based story
- Doesn't tell a story of injustice
- Doesn't factually show how the client was hurt by the error
- Incoherent writing
- Bad writing/grammar

# Prioritizing What Needs Improvement

- Misses a winnable legal issue
- Doesn't use/cite correct law or cases
- Doesn't support the legal issue with facts
- Doesn't tell a fact-based story about the legal error
- Doesn't tell a fact-based story of the injustice/unfairness
- Incoherent writing
- Bad writing/grammar
- Confusing/awkward/run-on/needlessly repetitive writing

# Preparing to Edit/Critique

- Read the brief
- Read any opinions or rulings
- How do you know if there are any missed legal issues?
- You have to read the record

# Do You Have Time To Read The Record?

- Triage: What must you read?
- Start at the end – verdict and sentencing
- Opening and closing
- Evidentiary hearings
- Motion papers, briefs, and rulings
- Any thing else you suspect may have an issue the lawyer missed
- But it's best (if possible) to read/skim the whole thing

# **Do You Have Time To Do Legal Research?**

- Triage based on your own experience
- At least check out the main cases
- Make sure the lawyer got the facts and the legal ruling of those cases right