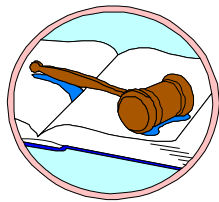


Legal Skills



Policies Procedures and Rules

Twentieth Edition

August 2009



PREFACE

In spite of extensive revision from the first edition, this twentieth edition of the Legal Skills Policies, Procedures and Rules (PPR) remains in a state of development.

These Rules are arranged as follows:

- I. General Rules**
 - A. Administration**
 - B. Rules Relating to Client Representation**
 - C. Rules of Ethics**
- II. Rules of Trial Court Procedure and Evidence (RTCPE)**
- III. Rules of Appellate Procedure (RAP)**
- IV. Appendices**
 - A. Legal Skills I Evaluation Criteria**
 - B. Legal Skills II Evaluation Criteria**
 - C. Legal Skills III Evaluation Criteria**
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 - E. Agreement to Provide Legal Services**
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 - G. Sample Notice of Appeal**
 - H. Sample Appellate Brief Title Page**

No system of procedure is perfect; only experience can demonstrate the adequacy -- or inadequacy -- of rules and procedures. Further, conditions and people change, and procedure must accommodate those changes. Student experience is often the only means of evaluating the effectiveness of rules like these. The Legal Skills staff welcomes your comments and suggestions at any time.

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I. GENERAL RULES

A. ADMINISTRATION

Rule 1 Course Goals

The overall goal of Legal Skills is to help students become competent, ethical lawyers sensitive to their various roles as attorney, counselor, officer of the court, and public servant. The course seeks to augment more traditional academic approaches by presenting students with a different perspective on the legal system. Legal Skills is not an alternative to academic study and scholarship but rather an additional aspect to it.

Rule 2 Cooperation; The Honor Code

(a) In General

A significant portion of legal education accrues from interaction among students. Similarly, the quality of legal work in practice is often enriched by collegial assistance. Accordingly, unless otherwise prohibited [*see, e.g.* General Rule 15(c)], Legal Skills assignments permit consultation with other associates from the same law office, with the partners of that office, with the writing consultants, with the librarians and with any other member of the William & Mary Law School Faculty when acting in the capacity of a faculty member. Consultation may include review of written drafts, and the receipt of editing and incidental research assistance. "Assistance" does not permit a person, however, to complete substantial portions of an assignment for another, and improper assistance of this type, as well as other help not permitted by this rule, may constitute violations of the Honor Code.

Any suspected violations of the Legal Skills Policies, Procedures and Rules should be reported to a member of the Legal Skills staff; and any suspected violations of the Honor Code should be reported in accordance with the Honor Code.

You can find the Honor Code on the web at:

<http://www.wm.edu/offices/deanofstudents/services/studentconduct/honorcode/index.php>

For your information, the Honor Code's section on Plagiarism includes the following:

Plagiarism occurs when a student, with intent to deceive or with reckless disregard for proper scholarly procedures, presents any information, ideas, or phrasing of another as if they were his or her own and does not give appropriate credit to the original source. Proper scholarly procedures require that all quoted material be identified by quotation marks, or indentation on the page, and the source of information and ideas, if from another, must be identified and be attributed to that source. Students are responsible for learning proper scholarly procedure. While any amount of improperly unattributed material may be sufficient to find plagiarism, a student may be presumed to have acted with intent to deceive or with reckless disregard for proper scholarly procedures when a significant amount of improperly attributed material is presented as if it were the student's own work. In the absence of proof of the accused's intent, the hearing panel shall determine whether the amount of improperly attributed material is so significant that intent may be presumed.

(b) *Joint Work Assignments*

Joint work assignments, as in team or working group assignments, require a composite product.

(c) *Individual Work Assignments*

When each member of a working group is instructed to complete an identical assignment individually, consultation and assistance referred to in paragraph (a) is permitted. However, no explicit division of labor within the group of either research or writing is permitted. [See General Rule 15(c)]. Nor can associates include in their individual assignments the written work of another [e.g. A statement of facts prepared by all associates in a working group can be incorporated verbatim by all associates in their memos. However, a statement of facts prepared by one associate for the file cannot be incorporated verbatim by all associates in their memos; only the associate who actually prepared the statement of facts can include it verbatim].

(d) *Examinations*

Unless otherwise directed by proper authority, all examinations must be completed personally without any assistance from another person.

(e) *Cases From Other Jurisdictions*

It shall be a violation of Legal Skills Policies, Procedures & Rules to observe court proceedings or access court filings in the same Legal Skills case scenario from another jurisdiction (e.g. counsel for NY's Meyerson v. Blakemore case cannot observe proceedings in VA's Meyerson v. Blakemore case).

Rule 3 *Program Management; Centralization*

(a) *Centralization*

In a program such as Legal Skills, too much centralization will inhibit the creativity of individual office partners while too little centralization will create a fractured, inconsistent experience for the students. Therefore, in drafting these Rules an attempt has been made to permit sufficient autonomy to individual offices in the program while maintaining the necessary level of consistency through the central management of the program. In doing so, the central rules for the Program set goals and outline procedures for accomplishing assignments, but leave some decisions about implementation of the assignments to individual offices. Occasionally one office will choose to do an assignment in a slightly different way than another. Such slight differences should not be a cause for concern; instead they represent one means by which more can be learned about the efficacy of methods used in the Program, and about the variety of ways different practitioners might ethically approach the tasks of lawyering.

(b) Staff Responsibilities

Partners have overall responsibility for the conduct of their individual offices. Partners will have input for major issue decision-making in the program. An Executive Committee (consisting of Professors Lederer and Roberts) has decision-making responsibility in the Program. Some decisions require law school faculty approval (e.g. grading changes). Day to day operations of the Legal Skills Program is the responsibility of the Director, Professor Roberts.

Rule 4 Submission of Assignments

Unless otherwise instructed by a partner, all course assignments are to be submitted to office partners through mailboxes arranged for that purpose in the Legal Skills Suite. **When turning in a written assignment to a partner, unless otherwise directed by individual partners, two copies should be turned in - one to the Senior Partner and one to the Junior Partner.** Individual offices may adopt a procedure that allows submission of written work electronically to partners via e-mail. Check with your office's partners to see if e-mail assignment submissions are allowed. For partners who allow this practice, all deadlines remain the same as if documents were filed in the Legal Skills mailboxes. Refer to Rules of Trial Court Procedure and Evidence (RTCPE) 4 for additional instructions concerning assignments that must be filed with the court.

Rule 5 Non-Compliance with Course Requirements

(a) Requirements in General

Legal Skills course requirements will be set forth in the course syllabus, this document and its amendments and in separate memoranda to be circulated throughout the course. At a minimum, course requirements include:

- (1) Ethical conduct and performance at all times;
- (2) Prepared attendance in class (regular office meetings, consortium meetings **and** large section meetings);
- (3) Timely and competent preparation of all assignments, including group assignments;
- (4) Competent maintenance of all assignment memos and client representation materials distributed in the Legal Skills program;
- (5) Timely submission of all required documents;
- (6) Monitoring daily, Monday through Friday of the school year, of the syllabus, hanging files, and e-mail;

- (7) Competent service as a client or witness for Legal Skills.

Please note, it is a violation of Legal Skills Rules to provide counsel with confidential role-player fact patterns. Such a violation may result in discipline of both the role-player who provided the fact pattern and counsel who received it.

(b) *Evaluation Criteria*

The Legal Skills Program involves a large number of instructors and also a broad range of activities, which themselves vary greatly in nature; the activities range from standard academic endeavors, through a spectrum of practice-oriented activities, to the process of developing a sense of professional ethics. As a result of the Program's multi-faceted nature, evaluating students' work objectively and consistently is one of the major challenges for faculty. Likewise, students have sometimes expressed confusion about the manner in which their work is evaluated. In deference to the difficulty of performing these evaluations, Legal Skills has always used some form of pass/fail rather than a fully-graded system.

In an effort to make the administration of these evaluative judgments as consistent as possible, Legal Skills has adopted criteria that will be used by all partners in their evaluation of students' work. **The evaluation criteria for the four semesters of the Legal Skills Program are included as Appendices A, B, C & D in Part IV of this Policies, Procedures and Rules manual.** These criteria do not represent either new standards or minimum performance expectations. Rather, they are articulations of the performance goals toward which Legal Skills instruction is aimed. In evaluating students' work, partners look for evidence that students understand and are working toward these goals. Passing grades are given to all students who complete their assignments and who show satisfactory progress toward achieving the goals.

(c) *Non-Compliance*

Legal practice does not permit incompetent performance of work, whether viewed in total or individually, whether evaluated in terms of the inadequate substantive merit of a piece of work or of the untimely completion or filing of a document. All Legal Skills assignments and requirements must be completed in a timely, competent and ethical fashion. Major non-compliance, including non-submission of work or failure to serve as a client or witness in a satisfactory manner, may result in a grade of "F" in the course. A student receiving a "fail" in a semester is not permitted to proceed to the next semester of Legal Skills. Instead, such a student must wait until the next academic year and re-enter and repeat the semester of the program for which the student received the failing grade. The student must receive a "low pass," "pass" or "honors" grade before going on to the next semester of Legal Skills.

Non-compliance may be measured on a continuum, with respect to both the seriousness and the number of infractions. In the discretion of the appropriate partners, less serious non-compliance may result in one or more of the following requirements: that work is re-

done adequately; that additional work of a curative nature be completed; that additional work of an instructive nature be completed; or a grade of “low pass” be given in the course.

Rule 6 Legal Skills Grading Policy

Legal Skills is a nine-semester hour program of study. One of those hours is graded on the ordinary letter grade system (based on a legal profession/ethics examination administered during the final semester of Legal Skills.)

The “honors” grade is given to the student whose work viewed as a whole has demonstrated excellence during the relevant grading period. Any student who receives at least three “honors” grades in Legal Skills during their tenure at William & Mary will be awarded the distinction “Legal Skills Scholar” at their graduation.

A "pass" grade is given to the student who has completed all assignments, activities, and responsibilities during the relevant grading period and has made satisfactory progress toward lawyer competence at a level that would be expected of a student completing the relevant grading period.

A "low pass" grade is given to the student who has made only minimally satisfactory progress toward lawyer competence at a level that would be expected of a student completing the relevant grading period.

A "fail" grade is given to the student who has not made satisfactory progress toward lawyer competence at a level that would be expected of a student completing the relevant grading period, who has committed a gross breach of ethics, or who has failed to comply with program rules. Such progress is evaluated by examining the quality of the student's performance of all assignments, activities, and responsibilities during the relevant grading period, based on the evaluation criteria [*See* Appendices A, B, C, and D].

A student may fail for lack of effort, for lack of demonstrated progress toward competence despite best efforts, for gross ethical breach, or major non-compliance with program rules. Failure because of lack of effort might be indicated, for example, when a student fails to submit assignments or participate in activities, is late in submitting assignments, fails to carry out program responsibilities, or does inadequate work that results from minimal effort.

Failure is also indicated when a student, despite best efforts, fails to demonstrate the necessary development toward lawyer competence that would be expected of a student at the relevant grading period's stage of development. Failure because of gross ethical breach is indicated, for example, when a student suborns perjury, commits a gross breach of the duty of client loyalty or confidentiality, or commits other similarly unethical conduct.

The nine hours of credit are distributed as follows: two in the first semester, two in the second semester, two in the third semester, and three in the fourth semester. Students will receive a grade at the end of each semester and credit will be earned in any semester for which the student receives either a "low pass," "pass" or "honors" grade. A student receiving a "fail" in a semester is not permitted to proceed to the next semester of Legal Skills. Instead, such a student must wait until the next academic year and re-enter and repeat the semester of the program for which the student received the failing grade. The student must receive a "low pass," "pass" or "honors" grade before going on to the next semester of Legal Skills.

If a student has received a "fail" for the fourth semester, but a passing letter grade on the legal profession/ethics examination, one hour of credit has been earned and the student need not repeat the examination at the end of the student's repetition of the fourth semester of the program. If a student has received a "low pass," "pass" or "honors" grade for the fourth semester of the program, but has failed the legal profession/ethics examination, two hours of credit have been earned and that student must attend the class sessions relating to ethics during the spring semester of the following academic year, and must re-take and pass the legal profession/ethics examination.

Rule 7 ***Amendment of Rules***

The Legal Skills Staff may amend these Rules, issue additional rules, or provide for such procedures as may be necessary from time to time. No rule or order may be given retroactive effect unless explicitly directed, and no associate may be penalized for conduct that violates a retroactive rule.

Comment

When, in the opinion of the Legal Skills staff, an amendment of these Rules or the promulgation of a new Rule is of general interest and importance to the law school community, the proposed amendment or rule shall be posted and written comments solicited and considered before final adoption.

B. RULES RELATING TO CLIENT REPRESENTATION

Rule 8 General Statement; Organization of Groups and Assignments

(a) In General

Client representation is the heart of Legal Skills. Every effort will be made to realistically simulate ethical, competent, useful representation, and these Rules should be interpreted liberally so as to foster this result.

(b) Organization for Representation

(1) Working groups

Law offices will be divided into working groups of three, four or five counsel. Subject to these Rules, each working group is collectively responsible for the client and will be collectively responsible for opening and maintaining the case file. To encourage a fair division of labor among working group members, associates may provide partners with a peer evaluation of other working group members at the end of each semester.

(2) Teams

Each working group will be divided into two one-, two- or three-person teams. Teams will be responsible for work as may be designated.

(c) Work Assignments

Work assignments will come in the form of memoranda from a partner or the Legal Skills Office. Care should be taken to follow instructions that are included in each assignment, and to not misplace assignments or client representation materials. Assignments may be made to an entire office, a working group, a team, or an individual. [See also, General Rules of Program Administration, Rule 2].

Rule 9 Course Time

Timing of events, activities, and deadlines within simulated practice will not always correspond to real time. With prior notice to and approval from the Legal Skills Office, partners have discretion to adjust the time within which an event or activity must occur as the needs of the course dictate.

Comment

The rule may operate in either direction. For example, while the rules of civil procedure may permit that an answer to a complaint be filed within 20 days, a partner may request that it be prepared for submission in a shorter or longer period of time as the needs of the course dictate.

Rule 10 ***Files***

(a) In General

All case files must be maintained uniformly according to the format prescribed below in order to ensure accuracy and efficiency. At the end of each semester or upon request, files will be submitted to the partners for examination. File cabinets for Legal Skills client files are located in the Legal Skills file room (NW 257). All client files are to be maintained in these cabinets and the cabinets are to remain unlocked at all times. It is an ethics violation (and possibly an Honor Code violation) to look at, without the appropriate permission, any case file other than that of your own working group. Associates must take care not to breach client confidentiality.

When an assignment requires each working group member or team to produce a separate product, you must place a copy of at least one of them in the appropriate section of the client file. You may, if you choose, keep a copy of each member's or team's product in the file.

(b) Opening a File

A file should be opened for each client immediately after the conclusion of the initial interview or other initial associate contact with the client's matter.

(c) File Folder

Although each file may initially be opened using one or more ordinary manila file folders, each case file relating to Clients B, C, and E will eventually require a multi-part heavy file folder or an expandable file that contains dividers or individual manila folders for each section. Each folder must have the case name appearing on the tab of the folder, and each folder must reflect somewhere in a visible location the name of the appropriate law office and the working group responsible for it. Once pleadings are filed in a case, case number and year should also be included on the tab of the folder. Label each divider or folder tab to indicate which section it contains.

(d) Required Contents

Each file shall include the following:

(1) *Activities Log*

A log of all activities undertaken in support of the client's representation, including the reasons for the actions, must be stored in this section of the file. Each action taken should be described in detail, including the date and time of its undertaking. This section should be a full, chronological view of the case, including records of all contact or failed contact with the client and witnesses, and any other activities proposed or undertaken. The amount of time devoted to a particular activity should also be recorded. A Sample Activities Log is attached as Appendix F.

(2) *File Memoranda*

(a) *In General*

The case file should contain factual memoranda relating all significant case developments. These documents include, but are not limited to, the file-opening memorandum and fee agreement; summaries of interviews with clients or witnesses; and reports of negotiation results. You may include copies of assignment memos regarding the case. Such memoranda should be arranged in chronological sequence with the most recent on top. Unless otherwise instructed, a single, jointly produced file memorandum shall be generated by the working group for each event, activity, or development that occasions the production of a file memorandum (*e.g.* a meeting with a client). **These memoranda will not be referred to under the "writing assignment" heading on any syllabus.** Instead, they will be the working group's responsibility to prepare during the course of client representation, without prompting from the legal skills office or your partners.

(b) *The Opening Memorandum*

The opening memorandum need only contain:

- (1) The client's name
- (2) Any identified opposing parties
- (3) A factual summary of the initial interview
- (4) The client's goals
- (5) Any steps the law office must take initially and any initial thoughts about the case.

(3) ***Factual Documentation***

All documents obtained from the client, from the opposing party, or from third parties are to be stored in this section of the case file. Your handwritten interview notes and other background documents may be placed in this portion of the case file; as a general rule, however, the documents in this section of the case file will not include memoranda, pleadings, or documents prepared by attorneys. When a multi-part folder is used, material may be attached directly to the section back, but **material which may constitute a case exhibit, such as affidavits, diagrams, or police reports, shall not contain hole punches or associate writing.** Such material should be inserted in an envelope, which is itself hole punched and attached to the back of the case folder. When material becomes voluminous, it should be indexed.

(4) ***Correspondence and Index***

All letters, notes, and similar documents, including summaries of telephone and e-mail messages received or sent, must be maintained in the case file in the correspondence section. This material will be kept in chronological sequence with the most recent documents at the top. A correspondence index will be maintained on top of the correspondence listing, in chronological sequence, and should include the nature of the correspondence and the date received or sent.

(5) ***Pleadings and Court Documents with Index***

A single copy of every pleading or other court document filed in the case must be maintained in this portion of the case file. Each such document, by you and by counsel for the opposing party, must conform exactly to the original filed with the court. All such documents must be filed in chronological order with the most recent documents at the top. An index to the section must conform to the requirements of Section (e) below. A person examining the pleadings index should be able to determine immediately and easily the precise status of a litigated matter.

(6) ***Legal Research***

This section should serve as a record of all legal research conducted incident to the representation, including copies of your research memoranda, drafts of pleadings, and copies of important statutes, regulations, and cases. The decision of whether to copy an authority is within the discretion of the associates, subject to their particular law office policy.

(e) ***Indices***

Information which cannot be located in a timely and efficient fashion is not useful and indeed may be totally valueless. Indices are maintained to provide rapid access to information. An index should provide at a glance a chronological listing of all documents or activities associated with it. When those documents are ones which required official filing or service, the index must include the date of filing or receipt of the item, and a record of all service of process, including the date on which service was made and the manner in which service was effected.

(f) ***Computer Files and Indices***

Because computer files often provide more efficient and useful data access than paper files, associates may use computers to maintain information relevant to client representation. When computers are so used, a file structure similar to that described above should be used.

Computer files **are not** an adequate substitute for the paper (hard copy) files described above and computer files may be maintained **in addition to** and **not in place of** the paper files described above.

Associates who choose to use computer files should take special precautions to ensure data integrity, back-up, and adequate client confidentiality. Computer error or failure will **not** constitute an acceptable justification for untimely submission of material.

(g) ***Client Confidentiality***

Every associate must make every effort to safeguard the confidentiality of all information that is privileged, constitutes work product, or otherwise qualifies as a client secret or confidence.

Rule 11 Form of Written Assignments

Unless otherwise instructed by a partner, all written materials that are to be submitted to a partner, or the court, or both, shall be typed, **double-spaced**, on 8 ½ x 11 inch white paper with at least one inch margins on all sides **with left justification only** (please do not use full justification), and twelve point type.

When turning in a written assignment to a partner, unless otherwise directed by individual partners, two copies should be turned in - one to the Senior Partner and one to the Junior Partner. Individual offices may adopt a procedure which allows submission of written work electronically to partners via e-mail. Check with your office's partners to see if e-mail submissions are allowed. For partners who allow this practice, all deadlines remain the same as if documents were filed in the Legal Skills mailboxes. Refer to Rules of Trial Court Procedure

and Evidence (RTCPE) 4 for additional instructions concerning assignments that must be filed with the court.

Associates are required to keep a photocopy of all documents submitted as a course requirement. If a necessary document cannot be located by Legal Skills staff, it is the associate's responsibility to submit a photocopy of it. Such a submission does not excuse a failure or untimely submission of the original. If the associate cannot submit such a copy, the course instructors may treat the document as if the original had never been submitted.

Rule 12 Representation Activities

(a) Instructions

Instructions for the conduct of a representation activity (*e.g.* interview, negotiation, trial, etc.) will come in the form of a memorandum from a partner.

(b) Interview Rooms

Numerous Legal Skills meeting rooms are available for performance and/or videotaping of Legal Skills activities. When instructed by a partner to make use of a Legal Skills meeting room, associates should schedule the activity with the Court Clerk. Video cameras and playback monitors are available for use in Rooms 262, 266, and 236A and 236E, and additional cameras and tripods can be checked out from the Court Clerk. TVs, DVDs and VCRs are available for associate use in the Legal Skills file room at anytime, and in the Legal Skills Suite by appointment with the Court Clerk.

(c) Critique of an Activity by Non-Participating (Observing) Members of a Working Group

Unless specifically instructed to the contrary, no written critique of an activity need be produced by non-participating (observing) members of the working group. A contemporaneous, oral critique shall be given by the observing working group members.

(d) Contacting Client, Witness, or Opposing Counsel after Initial Interview

If the Working Group (WG) believes it is necessary to contact its client, a witness, or opposing counsel after the initial interview, when not directed to do so by a partner, the following is the procedure to be used:

- (1) The WG is to make the decision rather than individual associates.
- (2) The reasons for the contact are to be put in writing and given to a partner.
- (3) The partner will inform the WG whether or how to contact the client, a witness, or opposing counsel. Every contact with the client must be documented in the file.

Rule 13 ***Fees***

(a) ***In General***

Law is both a learned profession and a business. This dichotomy sometimes poses major questions concerning the just, ethical, and efficient delivery of legal services. The economics of law practice is accordingly a proper area of inquiry for Legal Skills. Fees are thus an ordinary element of Legal Skills' simulated practice. Fees are, however, only a means to an end in the course and should not be given undue importance.

(b) ***Fee Advisement***

During his or her initial interview, every client should be advised of the appropriate fee as set forth in the Agreement to Provide Legal Services (attached as Appendix E), and as modified by General Rule 13(c) and (d) below.

(c) ***Agreement to Provide Legal Services***

Unless an exception is granted by a partner, as a condition of representation every client will be asked to sign a written Agreement to Provide Legal Services during the initial interview. [See Appendix E]. All blank spaces on the form shall be either completed or crossed out before the client or the attorney signs the form.

(d) ***Fees***

(1) ***Hourly Rate and Retainer***

Unless an exception is granted by a partner:

- (A)** Initial interviews will be free to the client.
- (B)** Clients A, B and C will not be required to pay a retainer fee ("Initial Payment").
- (C)** **The hourly rate charged will be \$175.00 per hour.**
- (D)** In addition to legal fees, clients must pay costs and expenses.

(2) ***Pro Bono***

As members of the legal profession, attorneys are collectively obliged to ensure that people have reasonable access to competent legal representation. Pro bono representation is a fundamental aspect of membership in the legal profession, and a client in need of legal assistance shall not ordinarily be turned away because of an inability to pay. Each office shall formulate individual pro bono policies, and

no client shall be refused representation for reason of financial inability to pay unless and until an office partner so directs.

(3) *Contingent Fee*

When so directed by a partner, associates may represent clients under contingent fee agreements.

(e) *Billing*

Clients A, B and C will not receive bills for services, however, accurate logs of time spent in representative activities, as well as any costs and expenses incurred in the matter, should be kept by the working group in each client's file on the Activities Log. Clients E and ET will be billed at the conclusion of representation.

Rule 14 Client A

(a) *In General*

Client A representation will, at a minimum, include the following:

- (1)** initial interview;
- (2)** file opening;
- (3)** closed research memorandum of law in draft and final forms;
- (4)** opinion letter;
- (5)** negotiation;
- (6)** follow-up correspondence, drafting of contract, meeting and counseling with client.

(b) *Applicable Substantive Law*

Representation afforded to Client A will be conducted under the law of Wythe. Law that is supplied from jurisdictions other than Wythe is persuasive rather than mandatory authority.

Rule 15 Client B

(a) *Assignments*

Client B representation will, at a minimum, include the following:

- (1)** initial interview;
- (2)** file opening;
- (3)** client counseling;
- (4)** open research memorandum of law;

- (5) witness interviews;
- (6) pleadings;
- (7) a discovery conference;
- (8) interrogatory drafting and response;
- (9) motion practice as necessary;
- (10) pre-trial;
- (11) trial;
- (12) appeal, when applicable.

Other assignments may be included as necessary.

(b) ***Applicable Law***

As a general matter, **applicable substantive law will be state-law based. Procedural and evidentiary law shall be federal, as modified by the Legal Skills Rules of Trial Court Procedure and Evidence (RTCPE) and the Legal Skills Rules of Appellate Procedure (RAP).** In practice, if not reality, the division between state substantive law and federal procedural law shall be that which would be applied in a federal court diversity case. *See* Erie R.R. v. Tompkins, 304 U.S. 64 (1938).

For further clarification, please note that Legal Skills courts apply state substantive law and federal procedural and evidentiary law. That means that we use state law to identify elements of claims and defenses (substance) and that we use federal rules of evidence and procedure and federal cases interpreting them (procedure and evidence law). Sometimes the line between substance and procedure is blurry. In such close cases, be guided by the distinction as it is articulated in the *Erie* doctrine.

(c) ***Open Research Memorandum of Law***

- (1) The research office memorandum is to be done without any division of labor within a working group. You are encouraged to discuss your research and to exchange suggestions and leads with other members of your working group or law office. Although discussion and exchange of ideas among group members is encouraged along with the inevitable, incidental exchange of research work associated with the discussion, no explicit, wholesale division of labor is permitted (*e.g.*, "I'll do defamation; you do contributory negligence; we'll exchange."). Such a division may hamper individuals' learning of research skills as well as their preparation for later work on this particular client's case.

Rule 16 ***Client C***

(a) Assignments

Client C representation will, at a minimum, include the following:

- (1)*** initial interview;
- (2)*** file opening;
- (3)*** motion practice as necessary;
- (4)*** pre-trial;
- (5)*** trial;
- (6)*** appeal, when applicable.

Other assignments may be included as necessary.

(b) Applicable Law

Applicable substantive law shall be that of the office's home state, or, in specified cases, federal law. Procedural and evidentiary law shall be federal, as modified by the Legal Skills RTCPE and the Legal Skills RAP.

Rule 17 ***Client D***

[Reserved.]

[Since 1991, Client D work has been eliminated.]

Rule 18 ***Client E and Client ET***

(a) In General

Both Client E and Client ET are activities of Legal Skills IV, and both are jointly managed client representation. Although the substance, setting, and activities undertaken for Client E and Client ET vary widely, all will require client interaction, research, drafting, team project management, and billing.

C. RULES OF ETHICS

Rule 19 In General

(a) Applicable Standards

All partners and associates, when acting in the role of lawyer in the Legal Skills Program, are governed by the American Bar Association's Model Rules of Professional Conduct (Model Rules). Complaints of lawyer misconduct shall be considered pursuant to the procedures detailed in Rule 20.

Associates are required to comply with the ethical standards of the legal profession. This remains, however, a law school program in which students are "learning" the ethical standards of the profession; therefore, while no explicit reduction in the standard is made, authorities empowered to receive and act upon complaints of associate conduct that violates the standards shall consider the associate's level of education as to the applicable standards when evaluating the associate's conduct. When an associate is in doubt as to the propriety of a contemplated course of action, the associate should seek the advice of a partner or a member of the program's Executive Committee. Non-compliance with the ethical standards of the legal profession found to have resulted from intentional or gross negligence constitutes cause for the award of an "F" in the course. **Grade decisions are made by the associate's senior partner.**

(b) The Role of "Lawyer" in the Legal Skills Program

(1) Students/Associates

Within the client representation scenarios, students in the Legal Skills Program act in the role of lawyer for purposes of Rule 19(a). In other respects, (such as, for example, preparation for and attendance in class, taking the Professional Responsibility examination, and playing the role of client or witness) students are students in the Program, and are not lawyers for purposes of Rule 19(a). Student, as opposed to lawyer, conduct is subject to the Honor Code of the Law School and to other Law School academic regulations. Only lawyer conduct is subject to Rule 19(a). If a conflict exists between these Rules and the Honor Code, the Honor Code takes precedence.

(2) Staff/Partners

When acting within the Program's client representation scenarios, partners in the Legal Skills Program act in the role of lawyer for purposes of Rule 19(a). In other respects, partners act as teachers and administrators in the Program.

Partner action in the teacher's role, or administrative action necessary to ensure that Legal Skills rules and procedures are followed by students, judges, or other partners, is not

lawyer conduct for purposes of Rule 19(a). Partner misconduct in the teacher or administrator role should be reported to the Legal Skills Director, Professor Roberts. Misconduct of the Legal Skills Director should be reported to the Vice Dean.

Allowing associates to learn from mistakes is a key educational interest of the Program. As such, partners are not subject to discipline under MR 5.1 for associates' violations of MR 1.1 and 1.3.

Comment to Rule 19 (a) and (b)

Both students and staff, when in the role of lawyer in our simulations, must comply with the Model Rules, as adjusted to sensibly fit into an educationally motivated simulation.

Student conduct, as explained in Rule 19(a), is expected to comply with the Model Rules at a level appropriate to their progress through the program. Further, the lawyer ethics rules do not apply to their student, as opposed to lawyer, conduct in the program. See Rule 19(b)(1).

Staff is expected to have a greater level of knowledge and understanding of the Rules themselves, but also have the difficult task of maintaining a balance between their teacher/administrator role and their supervisory lawyer role. Rule 19(b)(2) tries to explain these balances. A couple of points are worth noting:

1. The educational mission of the program is paramount and staff must be careful to maintain the balance between lawyer and teacher/administrator roles. Two examples follow.
 - a. Staff may at times need to advise judges of legal skills procedures that are peculiar to Legal Skills, stepping out of their role as supervising lawyer and into their role as teacher/administrator of the program, in order to preserve the integrity of the educational experience for the students trying the case. So advising the judge, sometimes out of the presence of counsel, would be inappropriate if the partner were strictly confined to acting in the role of lawyer (as it would constitute ex parte communication), but may be necessary to make the simulation work. There may even be occasions when a factual adjustment necessary to the simulation has only recently been made and must be communicated to a judge; this too is appropriate conduct for the teacher/administrator in the simulation. Partners should strive for an orientation that allows the students to do the lawyering, and the staff to do the teaching/administrating, in such contexts.
 - (1) If, for example, defense counsel decides not to call the defendant in the Client C trial and the judge inquires of the partner whether Legal Skills allows defense counsel that option, the partner must be able to convey to the trial judge that our Legal Skills rules allow defense counsel to make this choice.

- b. Communication among partners, especially those supervising students representing opposing parties, sometimes reveals what would be confidential client communication. This too is an example of conduct that must often be engaged in by supervising partners in their teacher/administrator role to preserve the educational integrity of the program for students.
2. In furtherance of the program's educational mission, students must be allowed to make and then learn from mistakes, at least of some kinds. Paragraph 3 of Rule 19(b)(2) attempts to strike a balance. Under the Rule, a partner will not have supervising lawyer disciplinary liability for the competence and diligence errors of their students, but will retain supervisor disciplinary liability for other kinds of ethics violations of students. As teachers, we are responsible for raising the competence level of our students. In the Legal Skills Program, this responsibility is a teaching rather than lawyering responsibility. Failures in carrying out this responsibility ought to have implications that attend failure as a teacher. At the same time, partners are not responsible (because it would produce a less valuable educational experience for our students) for every competence-related lawyering decision of our students. Partners are, however, appropriately accountable for non-competence-related Model Rules violations of our students to the extent of supervisor liability under MR 5.1. A couple of examples may help.
 - a. A student's failure to find the best authority and the following failure to advocate as effectively as possible for the client is a competence related violation for which a partner might be responsible as a teacher, but not as a supervising lawyer. Partners must give best efforts to teaching research skills and hope that our students find the authority, but it is educationally better for the student to see the results of such a failure in the simulation than for partners to, in effect, litigate the case for the student to ensure that the simulated client is competently served.
 - b. By contrast, for example, when a student proposes to a partner that the student intends to suborn perjury or to contact an opposing, represented party without first contacting that party's lawyer, it is educationally sound to expect a partner to counsel with the student and insist that such conduct not be pursued.

Rule 19(b)(2) attempts to strike this balance by eliminating supervisor liability in example "a," a competence-related associate violation, but retaining it in example "b."

(c) *Sexual Harassment and Consensual Amorous Relations Policies*

All partners **and** associates in their contacts and relationships within the Legal Skills Program are governed by the College of William & Mary's policies on sexual harassment and consensual amorous relations.

These policies are available on the William & Mary website at:

<http://www.wm.edu/about/administration/provost/forfacstaff/policies/index.php>

Rule 20 Procedures

(a) Reports of Violation

Reports of violation of Rule 19(a) shall be made in writing and signed by the person or persons making the report. Such report shall be addressed to the Legal Skills Director (*see General Rule 20(b) below*) and left with the Court Clerk.

(b) Investigations

Upon receipt of a report, one member of the Legal Skills staff (the investigator); will be appointed by the Legal Skills Executive Committee. The investigator may not be a member of the respondent's Office or an Office in an adversarial relationship on the matter in question. The investigator shall, as expeditiously as possible, make a determination whether the alleged facts, if true, would constitute a violation of the Model Rules and whether the violation is of consequence. If the investigator determines that such allegations, if true, would constitute a violation, and the violation is of consequence, written notice shall be given to the respondent of the allegations, affording him or her 10 days within which to respond in writing to the investigator. The investigator shall then prepare a report that includes a recommended disposition, copies of which shall go to the Executive Committee, the respondent, and the complainant. The recommended disposition shall be adopted by the Executive Committee, and the investigator's report conclude the matter, unless the complainant or the respondent appeal the report and recommended disposition within 10 days of receiving those documents from the investigator. Written appeal of the investigator's findings and recommendations should be made to the Executive Committee.

(c) Disposition Following Investigation

Violations of the Model Rules will be treated in a way that will enhance the educational experience of the people involved and as closely as possible have the repercussions on the case as would happen in practice. Any other effects of such a violation will be determined by the respondent's senior partner as the teacher in the course, or by the Director of the Legal Skills Program or the Dean, as appropriate, if the respondent is a partner in the Program.

II. RULES OF TRIAL COURT PROCEDURE AND EVIDENCE

Rule 1 ***Name of Rules***

These Rules shall be known as the Rules of Trial Court Procedure and Evidence (RTCPE) and may be cited as RTCPE __.

Rule 2 ***Purpose and Interpretation***

These Rules shall be construed to secure the just, speedy, and inexpensive determination of every action. Insofar as may be practicable and consistent with the purpose of this course, these Rules shall be interpreted in such fashion as they would be in realistic situations, subject to such factors as may be inherent in their simulated nature. In the interests of expediting a decision or for other good cause, the court may suspend any of these Rules in a particular case and proceed in accordance with its direction.

Rule 3 ***Scope and Application***

These Rules, in conjunction with applicable Federal Rules of Civil Procedure, Criminal Procedure and Evidence, govern the pre-trial and trial procedure in all civil suits and all criminal proceedings. **If there is any conflict between these Rules and an applicable federal rule, these Rules preempt the federal provision.**

The following federal rules have no application to Legal Skills cases:

Fed. R. Civ. P. 1, 4, 6, 19, 20, 21-25, 38-40, 42-45, 47-49, 50(b)-(d), 51, 53, 62-67, 69-77, 79-83, 85, 86;

Fed. R. Crim. P. 1, 3-7, 9, 10, 12.2, 17, 18, 20-22, 23(a) and (b), 24-26.1, 27, 28, 30, 31(a)(b) and (d), 32(a)(1), 32(c) and (d), 32.1-35, 37-48, 50, 53-60;

Fed. R. Evid. 101, 706.

Rule 4 ***Filing and Service***

(a) Filing

Papers required or permitted to be filed in a court shall be submitted for filing with the Court Clerk in the Legal Skills Suite by personal delivery to the Clerk. The only exception to this personal delivery requirement is in the case of e-filing [*See* RTCPE 4(e)]. In the Clerk's absence, papers may be filed by leaving them in the Clerk's "IN" box on the desk in the Legal Skills suite, accompanied by a statement written on the paper to be filed and signed by counsel of the time and date of submission to the Clerk's

box. Regardless of the manner in which papers are filed, filing shall not be timely unless the papers are received by the Clerk through e-filing, or put into the Clerk's "IN" box, within the time fixed for filing. Filing will not be considered complete until a proper filing is date stamped by the Clerk. An improper filing shall be returned to the filer (see Notice of Improper Filing below for some of the reasons a filing might be returned to the filer). The filing due date ends with the closing hour of the Court, which is 5:00 p.m. **A copy of any paper filed with the Court shall be submitted by counsel to each of his or her office partners (two copies total - one to Senior Partner, one to Junior Partner, unless otherwise directed by individual partners).** Paper copies must be submitted to partners unless partners have instructed students that they are willing to accept documents served through e-filing as their copy.

*Office of the Court Clerk
William & Mary School of Law*

NOTICE OF IMPROPER FILING

TO:
RE:
DATE:

THE ATTACHED HAS NOT BEEN FILED DUE TO THE FOLLOWING:

- Untimely
- No Certificate of Service
- No time and/or date of filing and/or no signature when submitted to the court in the Clerk's absence
- No Firm Contact Information (Office name/address/ phone number) listed
- Absence of required signatures
- Absence of case number
- Other _____

If your date of filing will have passed before you can respond to this memo with an appropriate filing, your filing will be untimely. You must then file a motion to enlarge the amount of time for filing (See *RTCPE 5(c)*).

cc: Opposing Counsel
 Filer's Senior/Junior Partners
 Court File

(b) *Service of all Papers Required*

With the exception of the jointly filed discovery conference results for Client B, copies of all papers filed by any party shall, at or before the time of filing, be served by a party or person acting for him or her on all other parties to the action. Service on a party represented by counsel shall be made on all counsel of record.

(c) *Manner of Service*

Service may be personal, made through e-filing, or made by placement in the appropriate hanging file. Service by hanging file is complete on its placement.

(d) ***Proof of Service***

With the exception of the jointly filed discovery conference results of Client B, each document presented for filing shall contain proof of service in the form of a certificate of service including the date and manner of service, the document(s) served, and the names of the persons served, certified by the person who made service (see example below). A certificate of service shall appear on or be affixed to all filings with the court. **Proof of service should be attached to the end of the document being filed, and the copies of that document.** The Clerk will not accept papers to be filed without proof of service and will return such papers if left in the Clerk's office. **A certificate of service is also required at the end of documents filed through e-filing.**

<p>CERTIFICATE OF SERVICE</p> <p>I certify that I served the foregoing Complaint on counsel for Defendant Jones: Bill Davis, Esq., Jan Peterson, Esq. and Richard Gill, Esq., by placing accurate copies in counsels' hanging files on this 3rd day of April 2009.</p> <p style="text-align: right;">WILLIAMS AND ALLEN</p> <p style="text-align: right;">By: _____ Martha Williams, Esquire</p> <p style="text-align: right;">700 So. Henry Street Williamsburg, VA 23185 (757) 555-1111 Attorneys for Plaintiff</p>

(e) ***E-Filing***

E-filing is the required method of filing for all court documents (other than Appellate Briefs), unless otherwise specified in the assignment memo. Documents filed electronically have the same content requirements as paper filings with the Court Clerk. This means the actual document being filed must include a certificate of service and specific case/court information. When pleadings are filed electronically, signatures of counsel and client are not included on the filed documents. Therefore, when pleadings are filed electronically, RTCPE 4(a), (b) and (c) can be satisfied once the pleading with attached certificate of service is filed with the Clerk through the e-filing system, and is served to the appropriate opposing counsel electronically or via hanging file. **You must still provide a hard copy of the filed document to each of your partners unless otherwise directed by them.** Partners, in their own discretion, may allow an electronic copy through the e-filing system, rather than a hard copy, to suffice as their copy to

review. **All filing deadlines and content requirements remain the same for e-filing as for paper filing with the Court Clerk.**

Rule 5 Computation and Extension of Time

(a) Filing Deadlines

Counsel should make every effort possible to file documents in a timely manner. Any filing delay disrupts the carefully planned Legal Skills schedules and often results in opposing counsel having a reduced amount of time to meet their requirements. When possible, at the written request of opposing counsel, the Court Clerk will extend the time required to respond to any documents filed in an untimely manner.

If you believe that a filing of opposing counsel is late, notify the court **in writing or by email** of the lateness with copy to opposing counsel. Include in the notice all relevant information regarding the late filing. The court will respond with a memo or e-mail to the opposing counsel.

Unexcused late filings may result in one or more sanctions including, for example, the following:

- (1)** where applicable, a reduction of allotted time for a later court filing;
- (2)** refusal by the Court to consider the untimely filed document in its decision making;
- (3)** in repeated or egregious cases, reporting of the late filers to the disciplinary process (see General Rule 19);
- (4)** where applicable, imposition of other sanctions provided for by law, such as are found in Fed. R. Civ. P. 11 or 37, for example;
- (5)** a reduction in grade at the discretion of the senior partner.

*Office of the Court Clerk
William & Mary School of Law*

MEMORANDUM

TO:
FROM: Legal Skills Court Clerk
RE: Filing deadline
DATE:

According to opposing counsel and our records, you are late in your filing of [name of document]. If you believe that we are incorrect, please inform us immediately. If we are correct, *you must file a Motion pursuant to RTCPE 5(c)*, in addition to filing the untimely document, as soon as possible. We will examine your motion in light of Model Rule of Professional Conduct 1.3.

cc: Senior Partner
Junior Partner

(b) *Computation of Time*

In computing any period of time prescribed by these Rules or by an order of court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or school holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a school holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and school holidays shall be excluded in the computation. If the period of time prescribed or allowed is 7 days or more, intermediate Saturdays, Sundays and school holidays will be included in the computation.

(c) *Enlargement of Time*

The court for good cause shown may, upon motion, enlarge the time prescribed by these Rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. A Motion to the court to permit an untimely filing shall include a Proposed Order [all on one page, if possible]. If available, the document for which counsel is seeking late filing permission should be attached to the Motion and Proposed Order. The Proposed Order shall, if possible, include an endorsement of the opposing counsel agreeing to the Proposed Order. If opposing counsel endorses as agreeing to the Order, no response (RTCPE 9) will be required or allowed, and the court will grant the motion as an unopposed request. (*See Motion and Proposed Order example.*)

IN THE [name of court]	
FOR [local jurisdiction, city or county] [state]	
MARY SMITH,	:
Plaintiff,	:
	:
V.	:
	:
ALAN JONES,	:
Defendant.	:
Case No. CLB-2-A-V-09	
MOTION TO ENLARGE THE AMOUNT OF TIME FOR FILING	
[Name of party, either Plaintiff or Defendant], moves the Court for an extension of time allowed for filing [name of document to be filed] pursuant to Rule 5(c) of the Rules of Trial Court Procedure and Evidence.	
[Include explanation for request].	
<hr style="width: 25%; margin-left: 0;"/> Martha Williams, Esquire WILLIAMS AND ALLEN 700 So. Henry Street Williamsburg, VA 23185 (757) 555-1111 Attorneys for Plaintiff	<hr style="width: 25%; margin-left: 0;"/> Opposing counsel (with firm contact info) [signs if motion is unopposed]
PROPOSED ORDER	
It is ORDERED that the Plaintiff's [or Defendant's] motion to enlarge the amount of time for filing be granted and time for filing extended to [date].	
<hr style="width: 25%; margin-left: auto; margin-right: auto;"/> Judge	
[CERTIFICATE OF SERVICE ALSO REQUIRED FOR PROPER FILING OF THIS MOTION AND ORDER]	

Rule 6 Required Stipulations

The Legal Skills staff, in order to control the length and complexity of trials may, and in most cases will, limit the number of witnesses that may be called at trial and require the parties to enter certain stipulations. These required stipulations shall be distributed to the parties' counsel in advance of trial.

Rule 7 Motions

(a) Motion Defined

The term "motion" as used in these Rules is defined as it is in Fed. R. Civ. P. 7(b). No motion which has not been assigned by Legal Skills may be filed unless the filing is approved by a senior partner.

(b) *Motions Prohibited*

Although the following rules apply to Legal Skills cases, motions under these Rules are disfavored and no motion may be filed under them unless a senior partner, after consultation with Program administrative staff, specifically instructs an associate to do so:

Fed. R. Civ. P. 12(b)(1-5) and (7), 12(e), 12(f), 55, 59;
Fed. R. Crim. P., 8, 12(b)(1-4), 14, 17.1.

(c) *Submission of Written Motion Close in Time to Bench Trial*

Any issue raised by written motion less than 120 hours prior to a bench trial shall be referred to the attention of the trial judge.

Rule 8 Form of Motions

In all actions, any motion shall conform to the following standards:

- (a)** Motions shall state with particularity the grounds upon which relief is sought. When so directed by a partner, a motion shall be supported by a written memorandum of law which shall include a statement of issues or introduction, statement of facts, argument and conclusion.
- (b)** Reference to any rule of procedure or evidence (whether a federal rule or a Legal Skills rule) shall be specific, including citation to any section, subsection or other part of such rule. Any notice of intent to introduce evidence which may be or is required to be filed shall specifically state the particulars of such evidence or statement.
- (c)** A proposed order shall be filed with every motion.
- (d)** Motions may be signed by any counsel representing a party and must be served on all opposing counsel, with proof of service attached.
- (e)** In the event a motion not assigned by Legal Skills is filed, a signed original, including written authorization by the senior partner, shall be submitted for filing by personal delivery to the Court Clerk in the Legal Skills Suite. In addition, the motion shall be served on all opposing counsel.

Rule 9 Response to Motions

(a) *Form and Service*

The form, service, and filing of any response to any motion shall be governed by RTCPE 4, 5, 7, and 8.

(b) *Response and Waiver*

Unless a different time is given by assignment sheet or order of court, all responses must be filed with the court and served on the movant within 5 days of the time of the motion's service upon the non-moving party. Failure to respond within that time may result in default and the automatic granting, in whole or in part, of the relief sought.

(c) *Procedural Challenges*

Failure to comply with any prescribed procedure may be asserted as an objection to any relief requested in any motion. Non-compliance may be noted by the court on its own motion. The court may proceed as the interests of justice may require.

Rule 10* *Decision of Motions, Oral Argument

(a) *Pre-trial Judges*

Senior partners are assigned to act as pre-trial judges as needed, through a system that is managed by the Court Clerk. After any motion that requires pre-trial action is filed with the court, the Clerk will notify the appropriate judge. The Clerk or the judge will further advise associates as necessary.

(b) *Rulings*

Motions may be ruled upon prior to trial by the pre-trial judge. In the discretion of the pre-trial judge, motions may be reserved in whole or in part for resolution by the trial judge.

(c) *Oral Argument*

Upon motion of either party or on its own motion, the court may, but ordinarily will not, order oral argument on any pre-trial motion or issue.

Rule 11* *Discovery: Criminal Cases

(a) *General Provision*

In any criminal action, counsel is prohibited from using any formal discovery procedure unless specific authorization to use a given procedure is given by a partner. Such authorization will not be given without the approval of a partner representing the opposing party.

(b) Constitutional Standards

Notwithstanding any provision to the contrary, all prosecutors in all criminal actions shall disclose any information which is required to be disclosed under the Constitution whether requested by the defense or not.

Rule 12 Discovery: Civil Cases

- (a) In any civil action, except when so instructed by a partner, counsel is prohibited from using any formal discovery procedure.
- (b) When discovery is had, the duty to supplement answers under Fed. R. Civ. P. 26(e) applies.

Rule 13 Pre-trial Memoranda and Conferences/Trial Plan

- (a) No pre-trial memoranda need be filed with the court. Each counsel or trial team must, however, submit a trial plan/outline to a partner. The plan should be submitted during the week that precedes the week during which counsels' trial is scheduled, and a meeting with the partner should be scheduled during that week to discuss the written plan.

The plan should be 2-4 pages long. It should include the following:

- your theory of the case,
 - your plan for presenting evidence, including your planned use of technology during trial,
 - which witnesses you expect to testify for either side,
 - the key points to which they will testify,
 - potential objections that may be raised to expected testimony or evidence, and
 - the key points that you expect to make during your opening and closing statements.
- (b) Every trial team in every trial, whether civil or criminal, is required to make effective use of technology during the presentation of their case. Courtroom technology training will be provided to second year students in the fall semester, and students will be required to file with the Center for Legal and Court Technology (CLCT) a technology intent form at least one week prior to their trial, selecting the technology they will utilize at trial.

Rule 14 Availability of Jury Trial

Jury trial is unavailable. All Legal Skills trials are tried to the court.

Rule 15 ***Pretrial Motions heard by the Trial Judge***

Motions that have been filed under Rule 7(c) or that have otherwise been held for ruling by the trial judge shall be heard by the trial judge prior to opening statements. In order to ensure that adequate time remains for trial, no more than fifteen minutes may be allotted by the trial judge for the presentation of such motions.

Rule 16 ***Opening Statements***

Each party must present an opening statement, but opening statements **should not ordinarily** exceed 5 minutes. Unless the trial judge grants an exception upon specific request, a single attorney for each party must present the opening statement.

Rule 17 ***Evidence***

(a) Exhibits

Documents provided by Legal Skills staff or witnesses which are supposed to be originals will be regarded as accurate photocopies of the originals, and no best evidence objection may be made to them.

For purposes of trial, all such documents are to be considered as authentic and authenticated; opposing counsel may not object to them on grounds of authenticity or on 6th Amendment confrontation grounds. Further, no counsel may object to the documents on first level hearsay grounds. However, opposing counsel may object to material within the documents that would constitute inadmissible second level hearsay. In other words, if an affidavit includes a statement like, “My friend Joe told me that the defendant did . . .,” that statement will be inadmissible hearsay if offered for its truth and if it fails to qualify as an exemption or exception to the hearsay rule. Counsel may also object to material within the documents on other grounds, such as relevance, character evidence, and so forth. Thus, in a given case, portions of a document may be inadmissible, and the fact finder will be required to consider only the admissible portions. **An inadvertently mistaken reference to a party or affiant's gender in affidavits should be read to agree with the gender of the role-player.** All exhibits shall be marked and shall be shown to the court reporter in advance of trial.

In an effort to make the trial experience more realistic and to maximize the benefit of technological use in trials, in certain instances counsel may generate their own evidence, or make a written request that the Legal Skills staff generate specific additional evidence, in addition to that already supplied by Legal Skills staff or witnesses. This evidence must be logically connected to the existing Legal Skills fact pattern. **Such additional evidence may be presented at trial only with permission**

from opposing counsel and/or Professor Roberts in advance of the trial. Once opposing counsel or Legal Skills staff approves the proposed evidence, an Order issued by the Court Clerk deeming approval will be placed in the court file. An Order approving proposed evidence does not deem the evidence admissible. Counsel is still required to lay the proper foundation and overcome any objections by opposing counsel to have the evidence admitted by the court.

(b) *Calling of Witnesses*

In a two witness case, counsel may not call the opposing party's witness unless that opposing party declines to call his or her own witness. **In a criminal case, however, if defense counsel does not call the defendant to testify, the prosecution will not have the opportunity at any time to call the defendant as a witness.** Unless so instructed by a partner or approved by opposing counsel and Legal Skills staff, witnesses other than the two parties in a civil case or the defendant and a single prosecution witness in a criminal case may not be called at trial. Affidavits, depositions, or other statements from a person not called are prohibited unless such document was supplied or its use authorized by Legal Skills staff as described in RTCPE 17(a).

In a criminal case, the defendant has a right not to testify and any decision made accordingly by the defendant and his counsel will be honored by the trial judge and Legal Skills staff.

(c) *Handling of Witnesses*

Unless the trial judge grants an exception upon specific request, a single attorney for each party must handle all activities related to a given witness, including both questioning the witness and making or responding to any objections that arise during the witness' testimony.

Rule 18 Motion for Judgment as a Matter of Law

Motions for judgment as a matter of law or for judgment of acquittal may be made orally during the trial of any case. To effectuate the educational goals of the course, a decision to grant the motion will normally be reserved until the completion of the presentation of evidence by both parties. The provisions of Federal Rule of Civil Procedure 50(a) and 52(c) and Federal Rule of Criminal Procedure 29(a) and 29(b) are incorporated by reference.

In a civil case, in the event the plaintiff declines to call his or her own witness, and the defense intends to call that witness as part of his or her presentation of defense evidence, the trial judge shall reserve the decision of whether or not to grant the motion until after the defense has presented the entirety of its other evidence.

Rule 19 ***Closing Arguments***

(a) Order of Arguments

In any action, after the closing of evidence, the plaintiff or prosecution shall open the argument. The defense shall be permitted to reply. The plaintiff or prosecution shall then be permitted to reply in rebuttal; counsel need not request or reserve rebuttal time. Unless the trial judge grants an exception upon specific request, a single attorney for each party must present the closing argument and rebuttal, if applicable.

(b) Length of Arguments--Bench Trial

In any action, closing arguments **should not ordinarily** exceed 5 minutes by each party, and rebuttal **should not ordinarily** exceed 2 minutes.

Rule 20 ***Judgment***

(a) Counsel shall submit Proposed Findings of Fact and Conclusions of Law to the court prior to the commencement of the trial.

(b) Judgment shall be entered without unnecessary delay.

Rule 21 ***Requests for Injunctive Relief***

(a) Scope and Application

Unless superseded by this rule or otherwise inapplicable because of the simulated nature of the proceedings, requests for injunctive relief under this rule are governed by Legal Skills RTCPE 4, 7, 8, 9 and 10 and by applicable Federal Rules of Civil Procedure and Federal Rules of Evidence. **Applicable substantive law is unaffected by these Rules.**

(b) Judges--On Call Judge

During periods of expected activity, an on-call Judge shall be designated to receive notice of anticipated temporary restraining order (TRO) and preliminary injunction motions, and to hear such motions. The name of the on-call judge shall be available from the Court Clerk in the Legal Skills office. **Counsel will be responsible for setting up a time for a hearing with the appropriate judge and opposing counsel, when applicable. Counsel must also inform the Court Clerk and opposing counsel of the time, date and location of the hearing once it has been established.**

(c) Notice

(1) To Opposing Party

Except as permitted by RTCPE 21(d) below, no preliminary injunction or TRO shall be issued without notice to the adverse party. Notice shall be given to opposing counsel no less than 24 hours before the scheduled hearing. Such notice shall consist of the name and phone number of counsel, the case name, and the nature of the relief sought. Such notice shall include the anticipated time and location of the hearing, when known.

(2) To Judge

The on-call Judge shall be contacted by counsel making the motion, and a time and place arranged for a hearing on the motion for a TRO or preliminary injunction.

(d) Ex Parte Applications

(1) In General

Even where permitted by law, ex parte applications are disfavored as contradictory to the educational goals implicit in these proceedings. Therefore, a request for a TRO normally will be treated as a request for a preliminary injunction.

(2) When Authorized

An ex parte application for a TRO may be made and acted upon when:

- (a)** It clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and
- (b)** the applicant's attorney certifies to the court in writing the efforts which have been made to give the notice of the time and place of the application or hearing, and the reasons supporting the claim that notice should not be required.

(3) To Whom Made

Unless otherwise directed by the Director of Legal Skills, ex parte application shall be made to the on-call Judge, with a copy of the application provided to the Court Clerk and the adverse party, at the time of application to the on-call Judge.

III. RULES OF APPELLATE PROCEDURE

Rule 1 Title and Scope of Rules

These Rules govern appeals in the William & Mary Law School Legal Skills Program; they shall be known as the Rules of Appellate Procedure (RAP) and cited as RAP _____. In these Rules the terms "trial court" and "court of appeals" are used in their generic sense. Designations particular to applicable jurisdictions should be used on all papers filed under these Rules. These Rules are based on the Federal Rules of Appellate Procedure, and their interpretation should be consistent with the interpretation of the analogous federal rules to the greatest extent possible consistent with the simulated nature of the Legal Skills Program.

Rule 2 Suspension of Rules

In the interest of expediting a decision, or for other good cause shown, a court of appeals may suspend the requirements or provisions of any of these Rules in a particular case on application of a party or on its own motion, and may order proceedings in accordance with its direction.

Rule 3 Appeal as of Right--How Taken

(a) Filing the Notice of Appeal

An appeal as of right from a trial court to a court of appeals shall be taken by filing a notice of appeal with the Court Clerk within the time allowed by RAP 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal.

(b) Content of the Notice of Appeal

The notice of appeal shall specify the case name and number; the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; shall list the errors that will be raised with the appellate court; and shall name the court to which the appeal is taken. A certificate of service form shall also be included on or attached to the end of the Notice of Appeal. (*See* Appendix G – for an example of a Notice of Appeal)

(c) Errors

After filing the Notice of Appeal, Appellant may freely abandon any of the errors listed therein. However, Appellant may add new errors in the brief and oral argument stages only with consent of opposing counsel or leave of court.

Rule 4

***Appeal as of Right--When Taken
Necessity of Replacement Cases***

- (a) All appeals in the Legal Skills Program are appeals as of right.
 - (b) **Within ten days after trial, unless otherwise directed by Legal Skills, Appellant shall file either a notice of appeal or a written certification to the court that a replacement case is required.**
 - (c) The certification that a replacement case is required shall be submitted when, after consultation with a partner and discussion with opposing counsel, either
 - (1) Appellant's case presents no nonfrivolous appealable issues,
 - (2) Appellee can make no nonfrivolous argument in response to a dispositive issue to be raised by Appellant, or
 - (3) After consultation with Appellant, an appeal is not warranted by the circumstances of the case.
 - (d) Upon receipt of a certification described in paragraphs (b) and (c), the court will issue an assignment for a replacement case immediately.
 - (e) Counsel who need replacement cases may exercise one of the following options:
 - (1) Counsel may do a parallel appeal in the same Client B or C case that the other halves of their working groups took to trial (assuming that that trial presented appealable issues); the record on appeal shall be the same record used by the other appellate counsel or team, but the appeals shall be done separately; or
 - (2) If the entire working group on each side consists of three or fewer people, the working groups may consolidate, each acting as one appellate team for the case that is appealable; or
 - (3) The Court Clerk shall issue an assignment for a replacement case and shall provide counsel with a copy of that case's record on appeal.
- If counsel for Appellant and Appellee (or both working groups, if option (2) is selected) agree on one of the three options listed above, Appellant's certification (as described in paragraphs (b) and (c) above) shall state the agreement. If counsel are unable to agree, they shall meet with the Director who shall decide which case is assigned for appeal.
- (f) No change in briefing schedule results from a replacement case assignment.

Rule 5 ***Jurisdictional or Other Similar Defect***

To effectuate the purposes of the Legal Skills course, jurisdictional or other similar defects in the trial will be treated as follows:

- (a) The Appellant should brief those issues and any other appealable issues.
- (b) The Appellee should brief the jurisdictional or other similar issues if they can do so consistently with Fed. R. Civ. P. Rule 11. If Rule 11 precludes making an argument in the brief, that fact should be so stated and only the other issues should be briefed.
- (c) If no argument is made in the brief on jurisdictional or other similar defect issues, then there will be no oral argument or appellate opinion on such issues.
- (d) Failure to arraign the defendant in a criminal case is not a grounds for appeal in Legal Skills.

Rules 6 - 9 ***[Reserved]***

Rule 10 ***The Record on Appeal***

- (a) The papers filed in the trial court and the transcript of proceedings, if any exist, shall constitute the record on appeal.
- (b) In the absence of a transcript, a video and/or an audio CD of the trial, available in the Legal Skills suite, is the record on appeal.
- (c) Videos and CDs are available to counsel for overnight viewing only through the Court Clerk. The official court records of trials, as well as judge's critiques, are available for viewing by counsel during the court's normal business hours of 9:00 a.m. to 5:00 p.m. Copies of individual trial transcripts, if available, will be distributed to counsel by email as they are completed.
- (d) ***Statement of the Evidence or Proceedings when No Report Was Made or When the Transcript is Unavailable***

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, and no video or audio CD exists, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement need only include evidence or facts of proceeding specific to the assignments of error, and shall be served on the appellee, who may serve objections or propose amendments thereto within 5 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval, and as settled and approved, shall be included by the Clerk in the

record on appeal.

- (e) If anything material to either party is omitted from the record, including the court's findings of fact and conclusions of law, by error or accident or is misstated, the parties by stipulation, or the trial court either before or after the record is transmitted to the court of appeals, or the court of appeals, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected.

Rule 11 ***[Reserved]***

Rule 12 ***Docketing the Appeal***

Upon receipt of the Notice of Appeal, the Court Clerk shall enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the trial court, with the Appellant identified as such.

Rule 13-24 ***[Reserved]***

Rule 25 ***Filing and Service***

(a) ***Filing***

Papers required or permitted to be filed in a court of appeals shall be submitted for filing with the Court Clerk in the Legal Skills suite by personal delivery to the Clerk. The only exception to this personal delivery requirement is in the case of e-filing. [See RAP 25(e)]. In the Clerk's absence, papers may be filed by leaving them in the Clerk's "IN" box in the Legal Skills suite, accompanied by a signed statement by counsel written on the paper to be filed of the time and date of submission. Regardless of the manner in which papers are filed, filing shall not be timely unless the papers are received by the Clerk, through e-filing or put into the Clerk's "IN" box, within the time fixed for filing. Filing will not be considered complete until a proper filing is date stamped by the Clerk. An improper filing shall be returned to the filer (*see* Notice of Improper Filing on next page). The filing due date ends with the closing hour of the Court, which is 5:00 p.m. **A copy of any paper filed with the Court shall be submitted by counsel to each of his or her office partners (two copies total - one to Senior Partner, one to Junior Partner, unless otherwise directed by individual partners).** Paper copies must be submitted to partners unless partners have instructed students that they are willing to accept documents served through e-filing as their copy.

(b) ***Service of all Papers Required***

Copies of all papers filed by any party shall, at or before the time of filing, be served by a party or person acting for him or her on all other parties to the appeal. Service on a party represented by counsel shall be made on all counsel of record.

(c) *Manner of Service*

Service may be personal, made through e-filing, or made by placement in the appropriate hanging file. Service by hanging file is complete on its placement.

<p><i>Office of the Court Clerk</i> <i>William & Mary School of Law</i></p> <p>NOTICE OF IMPROPER FILING</p> <p>TO: RE: DATE:</p> <p>THE ATTACHED HAS NOT BEEN FILED DUE TO THE FOLLOWING:</p> <ul style="list-style-type: none"><input type="checkbox"/> Untimely<input type="checkbox"/> No Certificate of Service<input type="checkbox"/> No time and/or date of filing and/or signature when submitted to the court in the Clerk's absence<input type="checkbox"/> No Firm Contact Information (Office name/address/ phone number) listed<input type="checkbox"/> Absence of required signatures<input type="checkbox"/> Absence of case number<input type="checkbox"/> Other _____ <p>_____</p> <p>If your date of filing will have passed before you can respond to this memo with an appropriate filing, your filing will be untimely. You must then file a motion to enlarge the amount of time for filing [see RAP 26(c)].</p> <p>cc: Opposing Counsel Filer's Senior/Junior Partners Court File</p>

(d) *Proof of Service*

Each document presented for filing shall contain proof of service in the form of a certificate of service including the date and manner of service, the document(s) served and the names of the persons served, certified by the person who made service (see example below). A certificate of service shall appear on or be affixed to the papers filed. **Proof of service should be attached to the end of the document being filed, and the copies of that document.** The Clerk will not accept papers to be filed without proof of service and will return such papers if left in the Clerk's office. **A certificate of service is also required at the end of documents filed through e-filing.**

CERTIFICATE OF SERVICE

I certify that I served the foregoing Brief of Appellant on counsel for Appellee Jones: Bill Davis, Esq., Jan Peterson, Esq. and Richard Gill, Esq., by placing accurate copies in counsels' hanging files on this 23rd day of April 2009.

WILLIAMS AND ALLEN

By: _____
Martha Williams, Esquire
700 So. Henry Street
Williamsburg, VA 23185
(757) 555-1111
Attorneys for Appellant

(e) *E- Filing*

E-filing is the required method of filing for all court documents (other than Appellate Briefs), unless otherwise specified in the assignment memo. Documents filed electronically have the same content requirements as paper filings with the Court Clerk. This means the actual document being filed must include a certificate of service and specific case/court information. When pleadings are filed electronically, signatures of counsel and client are not included on the filed documents. Therefore, when pleadings are filed electronically, RTCPE 4(a), (b) and (c) can be satisfied once the pleading with attached certificate of service is filed with the Clerk through the e-filing system, and is served to the appropriate opposing counsel electronically or via hanging file. **You must still provide a hard copy of the filed document to each of your partners.** Partners, in their own discretion, may allow an electronic copy through the e-filing system, rather than a hard copy, to suffice as their copy to review. **All filing deadlines and content requirements remain the same for e-filing as for paper filing with the Court Clerk.**

NOTE: APPELLATE BRIEFS MAY NOT BE FILED ELECTRONICALLY THROUGH E-FILING

Rule 26 *Computation and Extension of Time*

(a) *Filing Deadlines*

Counsel should make every effort possible to file documents in a timely manner. Any filing delay disrupts the carefully planned Legal Skills schedules and often results in opposing counsel having a reduced amount of time to meet their requirements. When possible, at the request of opposing counsel, the Court Clerk will extend the time required to respond to any documents filed in an untimely manner.

If you believe that a filing of opposing counsel is late, notify the court in writing or by email of the lateness, with copy to opposing counsel. Include in the notice all relevant information regarding the filing. The court will respond with a memo or e-mail to the opposing counsel.

Unexcused late filings may result in one or more sanctions, including, for example, the following:

- (1) where applicable, a reduction of allotted time for a later court filing;
- (2) refusal by the Court to consider the document in its decision making;
- (3) in repeated or egregious cases, reporting of the late filers to the disciplinary process [see General Rule 19];
- (4) where applicable, imposition of other sanctions provided for by law, such as are found in Fed. R. Civ. P. 11 or 37, for example;
- (6) a reduction in grade at the discretion of the senior partner.

***Office of the Court Clerk
William & Mary School of Law***

MEMORANDUM

TO:
FROM: Legal Skills Court Clerk
RE: Filing deadline
DATE:

According to opposing counsel and our records, you are late in your filing of [name of document]. If you believe that we are incorrect, please inform us immediately. If we are correct, *you must file a Motion pursuant to RAP 26(c), in addition to filing the untimely document as soon as possible.* We will examine your motion in light of Model Rule of Professional Conduct 1.3.

Cc: Senior Partner
Junior Partner

(b) *Computation of Time*

In computing any period of time prescribed by these Rules or by an order of court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or school holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a school holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and school holidays shall be excluded in the computation. If the period of time prescribed or allowed is 7 days or more, intermediate Saturdays, Sundays, and school holidays will be included in the computation.

(c) *Enlargement of Time*

The court for good cause shown may, upon motion, enlarge the time prescribed by these Rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. A motion to the court to permit an untimely filing shall include a Proposed Order [on same page as motion, if possible]. If available, the document for which counsel is seeking late filing permission should be attached to the Motion and

Proposed Order. The Motion shall, if possible, include an endorsement of the opposing counsel agreeing to the proposed Motion. If the opposing counsel endorses the Motion, no response will be required or allowed, and the court will grant the motion as an unopposed request. (*See* Motion and Proposed Order example).

IN THE [name of court] FOR [local jurisdiction, city or county] [state]	
MARY SMITH,	: Appellant, : : V. : : ALAN JONES, : Appellee. :
	Case No. CLB-2-A-V-07
MOTION TO ENLARGE THE AMOUNT OF TIME FOR FILING	
[Name of party, either Appellant or Appellee], moves the Court for an extension of time allowed for filing [name of document to be filed] pursuant to Rule 26(c) of the Rules of Appellate Procedure.	
[Include explanation for request].	
_____ Martha Williams, Esquire WILLIAMS AND ALLEN 700 So. Henry Street Williamsburg, VA 23185 (757) 555-1111 Attorneys for [Appellant or Appellee]	_____ Opposing counsel (with firm contact info) [signs if motion is unopposed]
PROPOSED ORDER	
It is ORDERED that the [Appellant's or Appellee's] motion to enlarge the amount of time for filing be granted and time for filing extended to [date].	
	_____ Judge
[PROOF OF SERVICE ALSO REQUIRED FOR PROPER FILING]	

Rule 27 ***[Reserved]***

Rule 28 ***Briefs***

(a) ***Contents of the Brief***

The brief shall contain under appropriate headings and in the order here indicated:

- (1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.
- (2) A statement of the issues presented for review.

- (3) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subsection (d)).
- (4) A summary of argument (optional).
- (5) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant or the appellee with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record referenced.
- (6) A conclusion. A short statement of the precise relief sought.
- (7) Signature. The Brief shall be signed by at least one attorney of record. The names of all the attorneys of record, the Law Office, and contact information shall be given.

(b) ***Format and Mechanics***

The brief should be typed double-spaced on 8 ½ x 11" white paper with 1" margins on all sides, using twelve point type and left justification only, **stapled once in the upper left corner**. The brief of **appellant should have a blue cover** sheet and the brief of the **appellee should have a red cover** sheet. The cover sheet should contain the name of the court, the names and designations of the parties, the case number, and identification of the brief as that of the appellant or appellee, and the name and address of counsel. Citation to authority shall be in the form prescribed by the Uniform System of Citation ("Bluebook").

(c) ***Reference in Briefs to Parties***

Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore," etc.

(d) ***References in Briefs to the Record***

References in the briefs to parts of the written record shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used (refer to Bluebook Rule P.7). If there is no written transcript available, reference shall be made to the video (*i.e. see* Video) or CD (*i.e. see* CD) (no other designations are required, *e.g.* time counter reference).

(e) ***Reproduction of Statutes, Rules, Regulations, Etc.***

If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end.

(f) ***Length of Briefs***

Except by permission of the court obtained prior to filing, briefs shall not exceed 25 double-spaced typed pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. Format and mechanics must comply with RAP 28(b).

(g) ***Briefs in Cases Involving Cross Appeals***

If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of these Rules, unless the court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant. The brief of the appellant shall anticipate and respond to the issues of the cross appeal as well as the issues and argument of his appeal. There shall be no reply brief.

Rules 29-30 [Reserved]

Rule 31 Time for Filing Briefs; Number of Copies

- (a) A briefing schedule shall be issued by the Legal Skills staff and provided as part of the syllabus, posted outside the Legal Skills suite, and on the web. That schedule lists, by reference to the date of trial, the due date for the briefs of both Appellant and Appellee and the week during which appellate argument shall be held.
- (b) **Four** copies of each brief shall be filed with the Court Clerk, **each with the appropriate colored cover and certificate of service**. Counsel shall serve an additional copy on **each counsel** for the opposing party in accordance with Rule 25. Counsel should make **two additional copies, unless otherwise directed by individual partners**; one for the senior partner and one for the junior partner.

**NOTE: APPELLATE BRIEFS MAY NOT BE FILED
ELECTRONICALLY THROUGH E-FILING**

Rule 32 [Reserved]

Rule 33 Prehearing Conference

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid the disposition of the proceeding by the court.

Rule 34 Oral Argument

(a) Notice of Argument

The Clerk shall advise all parties of the time and place at which oral argument will be heard. The oral argument may be scheduled at any time not less than 48 hours following submission of the appellee's brief.

(b) Time Allowed for Argument

Unless otherwise provided by order of court, each side will be allowed 30 minutes for argument. The time for argument includes rebuttal, if applicable and requested at the beginning of appellate argument. If the appeal is being argued by two or more counsel for a party, they should decide amongst themselves how to divide the 30 minutes; however, each counsel must do a substantial portion of the oral argument. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever, in its judgment, further argument is unnecessary.

(c) Order and Content of Argument

The appellant shall argue first. The appellant's argument shall include a statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.