

APPELLATE LITIGATION CLINIC 2023-2024

The Appellate Litigation Clinic is a full-year clinic, led by Scott Ballenger and Cate Stetson, intended to give 12 third year students real practical experience litigating cases before the federal courts of appeals. We come from the biglaw appellate world—Scott was an appellate partner at Latham & Watkins until recently, and Cate is still the co-director of Hogan Lovells’ appellate practice—and we think of the clinic more as a small, excellent and highly collegial law firm than as a class. We usually work in teams of 2-4 students (plus us) to write briefs, and then divide arguments so that one student does the opening and the other the rebuttal. Litigation is unpredictable enough that it is impossible to make promises, but my hope is that we will take on enough cases over the course of the year that most if not all of you get a chance to argue at some point. We also will almost certainly write a petition for certiorari or two. We will meet all together most weeks at lunchtime on Fridays, but will also have regular individual case team meetings at times that are convenient for you. We encourage you to talk to past members of the clinic, who can give you the best sense of what it is like.

We work with the Fourth Circuit most frequently, but we also regularly take on cases in the Third, Sixth, Eleventh and D.C. Circuits. Next year we hope to have a case or two from the Ninth Circuit. A few illustrative recent matters handled by our clinic:

- A federal habeas case for a prisoner who was incarcerated for ten years for stealing a six pack of beer and a sandwich from a convenience store, because his lawyer did not understand that the lesser included offense of burglary was not grand larceny (10 years) but petty larceny (6 months). The court of appeals concluded that he received ineffective assistance, and ordered a new trial. *See Wright v. Clarke*, 860 Fed. App’x 271 (4th Cir. 2021). Virginia elected not to retry him, and he was released soon after.
- An excessive force case for a North Carolina prisoner who was beaten by guards. In a first for the Fourth Circuit (at least), the case was argued by a deaf student without any translation delay, by way of two simultaneous ASL interpreters (one translating her in real-time to the Court, and one translating the Court to her). The court of appeals agreed that the evidence presented a triable case, and adopted a general rule that qualified immunity is never appropriate when the constitutional violation turns on a forbidden state of mind. *See Dean v. Jones*, 984 F.3d 295 (4th Cir. 2021).
- A Title VII case for a woman who experienced racial harassment from the six year old child of her primary supervisor. The district court granted summary judgment on the ground that the employer could not be held responsible. The court of appeals agreed with us that employer liability could be based in negligent oversight and potentially also in agency law principles, and remanded. *See Chapman v. Oakland Living Center*, 48 F.4th 222 (4th Cir. 2022). Ms. Chapman recently won a favorable jury verdict.

- A case challenging a high school student's suspension for in-class discussion of the Parkland school shooting. The court of appeals agreed that his First Amendment rights were violated. *See Starbuck v. Williamsburg James City County School Board*, 28 F.4th 529 (4th Cir. 2022).
- A case for a Muslim prisoner who was denied access to kosher meals because he was not Jewish, forcing him to choose between violating his religion or becoming a vegetarian. The district court dismissed on the ground that there is no right to eat meat, but the court of appeals concluded that he had a claim for religious discrimination and remanded for trial. *See Coleman v. Jones*, 2022 WL 2188402 (4th Cir. 2022).
- A religious liberty case for a Muslim prisoner who was forced to listen to Christian worship services broadcast by closed circuit TV to the prison day rooms. The court of appeals recently remanded for further consideration of the Establishment Clause claims after the Supreme Court's decision in *Kennedy v. Bremerton*. *See Firewalker-Fields v. Lee*, 58 F.4th 104 (4th Cir. 2023).

If you are interested, we want to emphasize that this is a great experience but also a serious commitment. The Clinic counts for four credits each semester. You should expect that the workload will be at least commensurate with that and for some, at times, significantly more. You'd be taking on real professional obligations to real clients, whose freedom or livelihood often hangs in the balance. You should be prepared to prioritize their needs.

Interested students must both rank the clinic in the lottery system and submit an application by July 3. Please email us (at sballenger@law.virginia.edu) a current resume and transcript, some sort of writing sample, and a brief statement about why you are interested in the clinic and any experiences you have had that you think might be pertinent (e.g., moot court, mock trial, debate, work as a paralegal or police officer, etc.).

If you are selected, the clinic will be posted to your schedule before the regular course lottery process. **We want to be clear that this is a full-year clinic, and that if you enroll you will not be eligible for the separate Supreme Court clinic—which, next year only, will run only in the spring semester.** We anticipate working closely with the Supreme Court clinic and will probably share some class sessions and collaborate on some cases. But you will not be permitted to drop the appellate clinic in order to do that one in the spring. Continuity in our client representations is too important. You also cannot enroll simultaneously in the appellate clinic and in Cate's separate advocacy course (but it's fine if you have taken it previously). There are no specific prerequisites other than being a 3L, but Professional Responsibility, Evidence, Criminal Adjudication, Civil Rights Litigation, Church and State, Civil Liberties, and any courses in advocacy and advanced legal research and writing would all be helpful.

We look forward to hearing from you.