



The Advocacy Institute Is Pleased to Announce

PROGRAM ANNOUNCEMENT

TRIAL ADVOCACY SKILLS PROGRAM

July 11-14, 2016

**Richard J. Hughes Justice Complex
6th Floor Point Meeting Area – Attorney General's Library
25 Market Street
Trenton, New Jersey**

All registrants must have approval from their supervisors to attend AND the supervisors must assure Institute staff that the attendee will have no conflicting assignments during the four days of this program. DASG will not be allowed to register without the required supervisor assurance.

Program Summary

This intensive four-day program will enhance all aspects of the participants' trial advocacy skills. Experienced attorneys will provide individual instruction in a constructive and positive learning environment which will challenge participants to perform at their best. Deputies will build upon their existing skills, apply what they have learned, and understand how to persuasively and professionally further their clients' interests at trial. Topics covered include: opening statements, direct examination, using exhibits, cross examination, special impeachment problems, the ethics of witness preparation, and closing arguments.

Who Should Attend?

The program is designed for new Deputy Attorneys General who have never tried a case before, as well as for experienced attorneys who have not tried a case for a number of years and want to refresh their skills.

Who Is the Faculty?

Experienced members of the Attorney General's Advocacy Institute's faculty will be teaching this course.

CLE Credit

NJ CLE Credit: This program has been approved by the Board on Continuing Legal Education of the Supreme Court of New Jersey for 25.2 hours of total CLE credit. Of these, 1.2 qualify as hours of credit for ethics/professionalism, and 25.2 qualify as hours of credit toward certification in civil trial law.

NY CLE Credit: 24 substantive and 1.0 ethics credits (pursuant to the approved jurisdiction policy).

PA CLE Credit: 20 substantive and 1.0 ethics credits (\$31.50 mandatory registration fee required).

(These calculations are tentative. The final CLE hours to be awarded may change slightly prior to the beginning of the program, which changes, if any, you will know of prior to the program.)

How Do I Register?

State Employees

Most State employees are able to register for this course by going to <http://reg.dcj.lps.state.nj.us/login.aspx?portalid=2> and creating an AGAI Course Registration account. To do so, your computer **must** be attached to the government's Garden State Network. Upon opening the AGAI Course Registration System home page, you will see the Create Account link in the Login Box. Click on it and create your account, which will include you selecting a user name and password. Once you create your account, you can access the AGAI Course Registration System at <http://reg.dcj.lps.state.nj.us/login.aspx?portalid=2> to register for future courses or to manage your account. Please retain your user name and password for your records.

Non-State Employees or State Employees not Connected to the Garden State Network

If you are not a State employee, or are otherwise unable to access the AGAI Course Registration System through the Garden State Network, kindly email the Advocacy Institute at: AdvocacyInstitute@lps.state.nj.us for an authorization code to allow you access to the AGAI Course Registration System through the My New Jersey portal. **Setting up your account through the portal is a two-step process, the details of which are set forth in the next two paragraphs.**

Once you receive the portal authorization code you will be prompted to go to the My New Jersey portal at <http://www.state.nj.us/> and create a portal account. This is Step 1 of the process, which you need only do once.

Upon setting up your portal account, you need to set up your AGAI Course Registration System account. This is Step 2. To do so, log on to the My New Jersey Portal <http://www.state.nj.us/>. Upon opening the AGAI Course Registration System home page, you will see the Create Account link in the Login Box. Click on it and create your account, which will include you selecting a new user name and password. Once you create your account, you can access the

AGAI Course Registration System at <http://reg.dcj.lps.state.nj.us/login.aspx?portalid=2> to register for future courses or to manage your account. Please retain your user name and password for your records.

TRIAL ADVOCACY SKILLS TRAINING

July 11-14, 2016

Program Schedule

Introduction

This intensive four-day advocacy program is intended to enhance the participants' trial skills in a constructive and positive learning environment facilitated by experienced attorneys serving as faculty. While the program will challenge participants to perform at their best, the program's primary goal is to afford participants the opportunity to build upon the skills they have, take what they learn and apply it during their subsequent performances, and to finish the program with a better understanding of how to persuasively and professionally further their clients' interests at trial. The program is designed for new attorneys who have never tried a case before, as well as for experienced attorneys who have not tried a case for a number of years and want to refresh their skills.

The program will contain a mix of topical presentations on various aspects of trial practice and "learn-by-doing" workshops. The emphasis in the workshops will be on participant performance of various trial skills followed by constructive faculty critique. Each participant's performance will be critiqued by two faculty members during each workshop. **Starting on Day 1, certain workshops will be video recorded.** In these instances, each participant will also participate in a one-on-one review of his or her performance with a third faculty member. The program will conclude with a "trial," for which the participants will be paired in trial teams.

For purposes of this program, each participant has been designated as either an "A" or a "B". The A's will represent the Plaintiff, Margaret Polisi and the B's will represent defendants Simon Clark and Parker & Gould Law Firm throughout the program. Participants will remain an "A" or "B" as designated throughout the program. We will follow the State evidence and procedural rules during the program.

The program is very intensive. **There is not much preparation time available during the program. Before arriving at the program, participants should become thoroughly familiar with the materials and prepare for each workshop before it begins.** We recommend that participants review Steven Lubet, *Modern Trial Advocacy* (4th ed. 2009); Thomas A. Mauet, *Trial Techniques* (8th ed. 2010); or similar text, to help prepare for the program. The Institute has copies of the Mauet textbook for you to borrow should you wish to do so. This book must be returned at the conclusion of the program.

Supplemental instructions as to the preparation and conduct of the exercises will be provided before the training begins. We have every confidence that all participants will find this to be an instructive, challenging and rewarding program.

MONDAY, JULY 11, 2016

Welcome; *Opening Statements* Presentation; Case Theory Workshop; Opening Statements Workshop; *Fundamentals of Direct Examination* Presentation; Direct Examination Workshop

This morning will begin with the presentation: *Opening Statements*, which is intended to help participants develop and persuasively present their opening statements to juries.

Following the presentation will be the Case Theory Workshop. The A's will meet as a group with their faculty facilitator, and the B's will meet separately as a group with their faculty facilitator. For purposes of this workshop, participants should be prepared to work with each other on developing a unified case theory for their side. Case theory operates on three levels: legal theory, factual theory, and persuasive theme. Legal theory is why, as a matter of law, your client should prevail. Factual theory is a construction of the facts of the case that explains what really happened and why: it includes an analysis of the "good" and "bad" facts in the case and how they can be harmonized in a way that is favorable to your side's case and unfavorable to the other side. Persuasive theme is a way of presenting the case to make the jury want to find in favor of your client. Once you have determined your unified case theory the rest of your case planning should evolve from it.

After lunch we will have a workshop that will allow each participant to present his or her opening statement. The statement should contain all three elements of the participant's unified case theory (*i.e.*, legal, factual and persuasive). Among the areas participants should focus on are: capturing the jury's attention at the outset; previewing the evidence that will be introduced to support your unified case theory and undermine the other side's; and making the presentation as a whole persuasive in convincing the jury to later find in favor of your side. Faculty critiques will focus on whether the statement is persuasive in capturing the jury's attention and setting the scene for an effective presentation of the evidence.

We will continue with the presentation: *The Fundamentals of Direct Examination*, which is intended to provide participants with a basic overview of the effective methods of direct examination, and to help participants develop a technically sound and persuasive approach for their examinations during this program.

The final session of the day is the Direct Examination Workshop. This workshop will allow each participant to practice his or her skills as they relate to four topic areas within the *Polisi v. Clark and Parker & Gould* case file. The A's will examine Cliff Fuller and the B's will examine Jayne Post.

8:30 a.m. - 9:00 a.m.

Faculty Meeting & Participant Registration

- 9:00 a.m. - 9:15 a.m. Welcome & Introductory Remarks
- 9:15 a.m. - 10:15 a.m. **Presentation:** *Opening Statements*
Presenter:
- 10:15 a.m. – 10:30 a.m. Break
- 10:30 a.m. – 11:30 a.m. **Workshop:** Case Theory (This session will not be recorded)
For the purposes of this workshop, A's will meet as a group with their faculty facilitator, and B's will meet separately as a group with their faculty facilitator. Each participant should be prepared to discuss and develop a unified case theory for your side.

Faculty Leader A's: AAG Anthony Zarrillo
Faculty Leader B's:
- 11:30 a.m. – 12:30 p.m. Lunch (On your own)
- 12:30 p.m. – 2:00 p.m. **Workshop:** Opening Statements (This session will be recorded)
Each participant will deliver his or her opening statement. The statement should contain all three elements of the participant's unified case theory (*i.e.*, legal, factual and persuasive). Among the areas participants should focus on are: capturing the jury's attention at the outset; previewing the evidence that will be introduced to support your unified case theory and undermine the other side's; and making the presentation as a whole persuasive in convincing the jury to later find in favor of your side.
- 2:00 p.m. – 2:15 p.m. Break
- 2:15 p.m. - 3:15 p.m. **Presentation:** *The Fundamentals of Direct Examination*
Presenter:
- 3:15 p.m. – 3:30 p.m. **Break**
- 3:30 p.m. – 5:00 p.m. **Workshop:** Direct examination of *either* Cliff Fuller (A's) *or* Jayne Post (B's) (This session will be recorded)

Each A will conduct a direct examination of Cliff Fuller. Although each A should be prepared to do a full direct examination of Cliff Fuller, he or she will examine the witness on only one of the following topic areas, and should restrict his or her examination to that topic area:

(a) his personal history and educational background;
(b) his professional background;

- (c) his work history with Parker & Gould;
- (d) his relationship with Simon Clark;
- (e) his relationship with Margaret Polisi;
- (f) his knowledge of Polisi and Clark's relationship;
- (g) his knowledge of why Polisi was denied partnership;
and
- (h) any other relevant area of inquiry.

Each B will conduct a direct examination of Jayne Post. Although each B should be prepared to do a full direct examination of Jayne Post, he or she will examine the witness on only one of the following topic areas, and should restrict his or her examination to that topic area:

- (a) her personal history and educational background;
- (b) her professional background;
- (c) her work history with Parker & Gould;
- (d) her relationship with Simon Clark;
- (e) her relationship with Margaret Polisi;
- (f) her knowledge of Polisi and Clark's relationship;
- (g) her knowledge of why Polisi was denied partnership;
and
- (h) any other relevant area of inquiry.

5:00 p.m. – 5:15 p.m. Trial Overview and Assignments Session (All meet together)

TUESDAY, JULY 12, 2016

Introduction and Use of Exhibits* Presentation; *Using Exhibits Workshop*; *Direct Examination Workshop*; *Cross Examination and Impeachment Techniques* Presentation; *Cross Examination Workshop

The morning begins with the following presentation: *Introduction and Use of Exhibits*. This presentation is designed to assist participants in preparing to introduce exhibits correctly and persuasively in the *Using Exhibits Workshop* as well as throughout the remainder of the program.

The morning's first workshop is designed to provide participants with the opportunity to develop persuasive and legal foundations for various exhibits and then use the exhibits in examining witnesses. With regard to each exhibit, participants should: 1) be able to show the purpose for which the exhibit would be introduced at trial; 2) lay a persuasive foundation for the exhibit - showing through questioning why the jury should give value to the exhibit; 3) lay a legal foundation - showing through questioning why the judge should allow the exhibit in evidence; 4) make use of the exhibit after it has been introduced; and 5) consider how the exhibit could be

made more persuasive by the use of graphics, highlighting, demonstrative aids, etc. Participants should also prepare to oppose the admission of each exhibit offered by their fellow participants. Faculty critiques will focus on the technically-proper and persuasive way for introducing and using exhibits.

The day will continue with another direct examination workshop. This workshop will allow each participant to further practice their skills as they relate to topic areas within the *Polisi v. Clark and Parker & Gould* case file. The A's will examine Margaret Polisi and the B's will examine Simon Clark.

The afternoon begins with the presentation: *Cross-Examination and Impeachment Techniques*, which is intended to help facilitate the cross examination of the remaining witnesses, including helping each participant develop effective impeachment techniques.

The day concludes with a workshop on Cross Examination. This workshop will allow participants to develop their skills in cross examination. Each participant may assume that a full direct examination was previously conducted. The A's will cross examine Jayne Post and the B's will cross examine Cliff Fuller. All participants should focus on asking leading questions as part of a proper cross examination. Topics to address are those covered in the previous Direct Examination workshops.

8:30 a.m. - 9:00 a.m. Faculty Meeting

9:00 a.m. – 9:45 a.m. **Presentation:** *Introduction and Use of Exhibits*
Presenter:

9:45 a.m. – 10:00 a.m. **Break**

10:00 a.m. – 11:00 a.m. **Workshop:** Using Exhibits (This session will not be recorded)
Each participant should prepare to introduce and use two exhibits from the *Polisi v. Clark and Parker & Gould* case file. Each participant may choose the two exhibits and the witnesses through whose testimony he or she will seek to introduce and use the exhibits. Each participant will also be able to choose whether to introduce and use the exhibits on direct examination or cross-examination of the witnesses.

Each participant should be prepared to oppose the admission of each exhibit offered by his or her fellow participants.

11:00 a.m. – 11:15 a.m. **Break**

11:15 a.m. – 12:45 p.m. **Workshop:** Direct Examination of *either* Margaret Polisi

(A's) or Simon Clark (B's) (This session will be recorded)

Each A will conduct a direct examination of Margaret Polisi. Although each A should be prepared to do a full direct examination of Margaret Polisi, he or she will examine the witness on only one of the following topic areas, and should restrict his or her examination to that topic area:

- (a) her personal and educational background;
- (b) her professional background before becoming an attorney;
- (c) her work history as an associate with Parker & Gould;
- (d) her relationship with Simon Clark before becoming personally involved with him;
- (e) her knowledge of Clark's alleged affairs with other Parker & Gould staffers;
- (f) her personal relationship with Clark after the NCW case;
- (g) her knowledge of why she was denied partnership;
- (h) her post-Parker & Gould employment; and
- (i) any other relevant area of inquiry.

Each B will conduct a direct examination of Simon Clark. Although each B should be prepared to do a full direct examination of Simon Clark, he or she will examine the witness on only one of the following topic areas, and should restrict his or her examination to that topic area:

- (a) his personal history and educational background;
- (b) his work history with Parker & Gould;
- (c) his alleged personal relationships with other Parker & Gould staffers;
- (d) his relationship with Margaret Polisi before and during the NCW case;
- (e) his personal relationship with Polisi after the NCW case;
- (f) his knowledge of why Polisi was denied partnership;
- (g) his involvement with Polisi's efforts to see other employment; and
- (h) any other relevant area of inquiry.

12:45 p.m. – 1:45 p.m.

Lunch (On your own)

1:45 p.m. – 3:00 p.m.

Presentation: *Cross Examination & Impeachment Techniques*
Presenter: AAG Anthony Zarrillo

3:00 p.m. – 3:15 p.m.

Break

3:15 p.m. – 4:30 p.m.

Workshop: Cross Examination of *either* Jayne Post (A's) *or* Cliff Fuller (B's) (This session will be recorded)

Each A will conduct cross examination of Jayne Post. Each A will cross examine Jayne Post on topic areas of his or her choosing and may assume that a full direct examination of the witness has previously occurred.

Each B will conduct cross examination of Cliff Fuller. Each B will cross examine Cliff Fuller on topic areas of his or her choosing and may assume that a full direct examination of the witness has previously occurred.

WEDNESDAY, July 13, 2016

Special Impeachment Problems Workshop; Witness Preparation Presentation; Cross Examination Workshop; Closing Argument Presentation; Closing Argument Workshop

The first workshop of the third day focuses on the special impeachment problems. These problems, which were previously provided to each participant, are designed to have the participants impeach Margaret Polisi and Simon Clark with their prior inconsistent statements (affirmative statements and omissions). The A's will seek to impeach Simon Clark, while the B's will seek to impeach Margaret Polisi. While each participant should prepare all four problems for his or her respective side, each participant will do one problem only, the selection of which will depend upon the order in which each participant performs during the workshop. The testimony in the problems will be inconsistent with previous statements of each witness, which statements are found in the *Polisi v. Simon Clark and Parker & Gould* case file. Participants need to review the previous testimony and statements in the *Polisi v. Simon Clark and Parker & Gould* case file to identify the inconsistencies. Faculty critiques will focus on each participant's ability to effectively and efficiently impeach the witness with his or her prior inconsistent statement.

The next morning session will be the *Ethics of Witness Preparation* presentation. This presentation is designed to provide participants with an overview of the ethical considerations of witness preparation as well as substantive techniques.

The day continues with another Cross Examination workshop. This workshop will allow participants to develop their skills in cross examination. Each participant may assume that a full direct examination was conducted. The A's will cross examine Simon Clark and the B's will cross examine Margaret Polisi. All participants should focus on asking non-leading questions as

part of a proper cross examination. Topics to address are those covered in the previous Direct Examination workshops.

The first presentation of the afternoon will focus on *Closing Arguments*. This presentation is intended to help participants develop and persuasively present their closing arguments.

The next workshop will focus on each participant presenting his or her closing argument. The argument should contain all three elements of the participant's unified case theory (*i.e.*, legal, factual and persuasive). Among the areas participants should focus on are: relating the closing argument to the opening statement; capturing the jury's attention at the outset; explaining how the facts elicited on direct and cross-examination support your unified case theory and undermine the other side's, including any inferences and conclusions you want the jury to make; addressing the applicable law as appropriate; and making the presentation as a whole persuasive to convince the jury to find in favor of your side. Faculty critiques will focus on whether the statement is persuasive in capturing the jury's attention and summarizing the testimony and other evidence as it relates to the participant's legal theory and theme.

8:30 a.m. - 9:00 a.m.	Faculty Meeting
9:00 a.m. - 10:00 a.m.	Workshop: Special Impeachment Problems (This session will not be recorded) Each A will seek to impeach Simon Clark and each B will seek to impeach Margaret Polisi with a prior inconsistent statement (either an affirmative statement or an omission). Although each participant should prepare all four problems; he or she will be assigned only one problem for this workshop.
10:00 a.m. - 10:15 a.m.	Break
10:15 a.m. - 11:15 a.m.	Presentation: <i>Ethics of Witness Preparation</i> Presenter:
11:15 a.m. - 11:30 a.m.	Break
11:30 a.m. - 12:45 p.m.	Workshop: Cross Examination (This session <u>will</u> be recorded) A's will conduct a cross examination of Simon Clark. Each participant may assume that a full direct examination was previously conducted.

B's will conduct a cross examination of Margaret Polisi. Each participant may assume that a full direct examination was previously conducted.

- 12:45 p.m. - 1:45 p.m. Lunch (On your own) & Trial Preparation with Partner & Meeting with Opposing Team Workshop
- 1:45 p.m. - 2:45 p.m. Presentation: *Closing Arguments*
Presenter:
- 2:45 p.m. - 3:00 p.m. Break
- 3:00 p.m. - 4:30 p.m. **Workshop:** Closing Arguments (This session will be recorded)

Each participant will present his or her closing argument. The argument should contain all three elements of the participant's unified case theory (*i.e.*, legal factual and persuasive). Among the areas participants should focus are: relating the closing argument to the opening statement; capturing the jury's attention at the outset; explaining how the facts elicited on direct and cross-examination support the your unified case theory and undermine the other side's, including any inferences and conclusions you want the jury to make; addressing the applicable law as appropriate; and making the presentation as a whole persuasive to convince the jury to find in favor of your side.

THURSDAY, JULY 14, 2016

Trials, Critiques, Brief Wrap-Up Session

Today will be devoted primarily to the trials. Participants should review the applicable "court rules" below before the trial. Following the trial will be a critique session in which the faculty member serving as the trial judge will offer his or her comments concerning each participant's performance during the trial.

The day will conclude with a brief Wrap-up Session.

-
- 8:30 a.m. - 11:30 a.m. Trials
- 11:30 a.m. - 12:00 p.m. Faculty Critique
- 12:00 p.m. - 12:15 p.m. Wrap up and Evaluations

or

12:30 p.m. - 3:30 p.m.	Trials
3:30 p.m. - 4:00 p.m.	Faculty Critique
4:00 p.m. - 4:15 p.m.	Wrap up and Evaluations

RULES OF COURT FOR FULL TRIALS

1. Work load for the trial should be divided so that each lawyer conducts an opening statement *or* a closing argument, and each lawyer conducts at least one direct examination and one cross-examination.
2. The witnesses will be Cliff Fuller and Margaret Polisi for the Plaintiff and Simon Clark and Jayne Post for the Defense. Each trial team may call its witnesses in the order of its choosing.
3. **Trial partners will play each other's witnesses.**
4. The judge will not consider any motions *in limine* at trial. All such motions not raised during the pre-trial conference are waived.
5. Time limits for the trials are as follows:
 - a. Opening Statements (Plaintiff then Defendant): 10 minutes per party
 - b. Witnesses

For the Plaintiff-	Margaret Polisi	15 minutes Direct; 7.5 minutes Cross
	Cliff Fuller	15 minutes Direct; 7.5 minutes Cross
For the Defense:	Simon Clarke	15 minutes Direct; 7.5 minutes Cross
	Jayne Post	15 minutes Direct; 7.5 minutes Cross
 - c. Closing Arguments (Defendant then Plaintiff): 15 minutes per party
6. Trial teams with three people should be divided such that each attorney conducts either an opening and a cross, closing and a cross or 2 direct examinations.