

**APPELLATE ADVOCACY
SYLLABUS
Professor Greg Johnson
Summer 2023**

Office Hours: Tuesday, 3:00-4:00 pm
Thursday, 3:00-4:00 pm
By appointment (email me)

The goal of this class is to develop the core analytic, research, writing, and oral advocacy skills you learned in Legal Writing I and II in the context of a large-scale project—a United States Supreme Court brief. Whereas most law schools use fictitious “moot court” problems, at VLGS each Appellate Advocacy section focuses on a real case currently before the United States Supreme Court. This summer Professor Fregosi and I have chosen an excellent administrative law case, *Loper Bright Enterprises, Inc. v. Raimondo*, in which the Court will decide whether to overturn the *Chevron* doctrine. You will be representing the Petitioners, who seeks to overturn *Chevron*. Although you will attend classes, you will conduct the bulk of your work individually, researching and writing assignments pertaining to this case. I will provide written critiques of your Research Outline, and drafts of your Statement of the Case, Point Headings, Summary of Argument, and Argument. We will conference to discuss your brief as you are redrafting it. You will incorporate my comments and then submit your final draft for grading ten days after our one-on-one conference. The course will culminate with an oral argument before a panel of volunteer lawyers serving as judges. You will be paired against a student in Professor Fregosi’s class for the oral argument.

MATERIALS

Megan McAlpin, *Beyond the First Draft: Editing Strategies for Powerful Writing* (2014).
Harvard Law Review Association, *The Bluebook: A Uniform System of Citation* (21st ed.
2020).
Course Materials (available on course Canvas site).

APPELLATE ADVOCACY RULES OF PROCEDURE

RULE 1: SCOPE OF RULES

These rules govern form and procedure for the writing assignments and oral arguments in Appellate Advocacy.

RULE 2: ASSIGNMENTS

You must submit 1) a Research Outline; 2) a draft Statement of the Case; 3) a draft of the Point Headings; 4) a draft of the Summary of Argument and Argument; and 5) a final brief. All written assignments must be submitted on Canvas. You must also participate in a practice oral argument and a final oral argument.

RULE 3: FORM OF WRITTEN ASSIGNMENTS

Written assignments must be typed and double spaced (except the Research Outline, which may be single spaced). The typeface should be Times New Roman, 12 point. Margins must be one inch on all sides. Pages must be numbered at the bottom center of each page.

RULE 4: GRADING

Final Brief:	70% of final grade
Oral Argument:	20% of final grade
Participation:	10% of final grade

Participation includes, among other things, class attendance, the quality and timeliness of your drafts, participation in class discussion, preparation for and participation in our individual conferences, and preparation for and participation in practice oral arguments.

RULE 5: TIMELY SUBMISSION OF ASSIGNMENTS

You are responsible for submitting assignments on time. Any student who fails to submit an assignment on time without prior permission is subject to a late penalty of five points per day late.

RULE 6: THE HONOR CODE

The Vermont Law and Graduate School Honor Code governs your work and conduct in Appellate Advocacy. Whenever you use the words or ideas of another writer you should acknowledge the original source. Cite the original source even if you put another person's ideas in your own words. The assignment you submit must be your own work product. You may not give an outline, draft or a completed assignment to anyone else, including other students, friends, partners, acquaintances, etc.

RULE 7: RESEARCH OUTLINE

Your first assignment will be a research outline summarizing the research you have done as well as a summary of the major issues in the case. The outline should include 1). The three strongest arguments in your favor; 2). The three strongest arguments in favor of your opponent; 3). Authority you have found already and sources you intend to consult; 4). Your (developing) theory of the case in paragraph form; 5). The Standard of Review. The page limit is 2-4 pages. The Research Outline is due by 11:59 p.m. on Sunday, June 11, on Canvas.

RULE 8: STATEMENT OF THE CASE

The Statement of the Case must succinctly state the legal background, relevant facts, and procedural history of the case. You must include “record cites” in your Statement of the Case. The page limit for this assignment is 6-8 pages. A draft of the Statement of the Case is due by 11:59 p.m. on Sunday, June 18, on Canvas.

RULE 9: POINT HEADINGS

The point headings are an outline of your argument. Each heading must be one complete sentence. Point headings should be single-spaced. Point headings must conform to the following conventions:

- I. MAJOR POINT HEADINGS, IDENTIFIED WITH A ROMAN NUMERAL, MUST CAPITALIZE EVERY LETTER OF EVERY WORD.
 - A. Sub-headings are identified with a capital letter and must be underlined.
 1. Minor sub-headings should not be capitalized or underlined.

A draft of the point headings is due by 11:59 p.m. on Sunday, June 25, on Canvas.

RULE 10: SUMMARY OF ARGUMENT AND ARGUMENT

1. Summary of Argument. The Summary of the Argument (Summary) is a synthesis of all arguments made in the body of the brief. It should strongly communicate your theory of the case. It should be no longer than two pages. The Summary should conclude with a request for relief. The Summary should not contain citations to the record or to authority.

2. Argument. The Argument is the heart of the brief. You must organize your points persuasively, and you must include citations to authority. Citations must conform to the Bluebook. The Summary of Argument/Argument should be between 10-15 pages.

A draft of your Summary of Argument and Argument is due by 11:59 pm on Sunday, July 2, on Canvas. I will critique your Summary of Argument and Argument and return them to you by email at least one day before our conference.

RULE 11: FINAL DRAFT OF BRIEF

The page limit for the final draft of the brief is 17-22 pages. Any brief that goes over the page limit will be penalized 5 points for each page over the limit. The Table of Contents and Table of Authorities are not counted toward the page limit. The final draft of the brief must be submitted in Word form on Canvas box no later than 11:59 pm, ten days after your individual conference. Exchange one copy with opposing counsel. Upload a copy of your brief in PDF form to the Appellate Advocacy website (instructions to follow). The final draft of the brief should contain the following sections:

1. Title Page. See the sample Title Page on Canvas.
2. Question Presented. The Question Presented should state the issue succinctly without attempting to set out a full argument. The Question Presented must appear on a separate page numbered “i” immediately following the cover page. The Question Presented must be single-spaced.
3. Table of Contents. The Table of Contents begins a new page numbered “ii.” It must set forth each section of the brief, including all point headings, with the number of the page of the brief on which each section begins.
4. Table of Authorities. The Table of Authorities begins a new page with the appropriate lower case Roman numeral. It must list each authority cited in the brief and the page(s) on which it is cited. If an authority is cited on seven pages or more of the brief, use “passim” instead of listing all pages. Divide the table of authorities into the following three sections:
 - (1) Cases. The first part of the table of authorities lists the cases cited in the brief in alphabetical order.
 - (2) Statutes and Constitutional Provisions. A list of all constitutional provisions, statutes, and code sections cited in the brief.
 - (3) Other Authorities. A list of all other authorities cited, such as law review articles and treatises.
5. Inside Caption. The Inside Caption is the title page without your name/address. The Inside Caption begins a new page numbered “1.”
6. Opinions Below. This section should give the citation to the pertinent opinions and judgments delivered in the courts below. It must be double-spaced.
7. Jurisdiction. The Jurisdiction Statement must contain a citation to the statutory provision, general rule, or other authority which confers jurisdiction on the Court to review the appeal. The statement must also contain the dates of the opinions below, the petition for certiorari, and the grant of the petition. It must be double-spaced.
8. Constitutional and Statutory Provisions Involved. This section should quote any constitutional provisions, statutes, or rules that are at issue. Give the complete citation. If the

provisions involved are lengthy, indicate that the provisions will be set forth in the Appendix to the brief.

9. Statement of the Case. (See RULE 8 above)
10. Summary of Argument. (See RULE 10 above)
11. Standard of Review A concise statement of the Standard of Review.
12. Argument. (See RULE 10 above)
12. Conclusion. The Conclusion must specify the precise relief requested. The Conclusion may also contain a very brief summary of the argument. The Conclusion should not contain new arguments or facts or citations to authority.
13. Signature Block. The signature block must appear as follows and must include your signature. Electronic signatures are acceptable.

Respectfully submitted,

Your Name
Your Address (can be fake)

14. Appendix. The appendix is optional. It cannot contain any argument. You can use it for quotes from statutory provisions, etc.

RULE 12: PRACTICE ARGUMENTS

Mandatory practice arguments will occur on Thursday, July 21. You will be allotted ten minutes for your practice argument. As Petitioner, you may use one minute of the ten minutes for rebuttal. I will pair you against a student in Professor Fregosi's section (not your final oral argument opponent). Professor Fregosi and I will ask questions during the practice argument and critique your performance afterward.

RULE 13: ORAL ARGUMENT

Oral arguments will take place on Thursday, July 27 through Saturday, July 29. You have twenty minutes to argue. You may use up to two minutes for rebuttal A panel of three or four volunteer lawyers will judge your oral argument.