

APPELLATE ADVOCACY SECTION 3  
FALL 2024: SYLLABUS  
CHESTER HARPER  
[charper@vermontlaw.edu](mailto:charper@vermontlaw.edu)  
(802) 831-1500  
Office Hours: Mondays, 3:30-5:00, SRLC

INTRODUCTION AND OVERVIEW

Welcome to Appellate Advocacy. The objective of this course is to sharpen your analytic, research, writing, and oral advocacy skills. Each Appellate Advocacy section focuses on one case currently before the United States Supreme Court. Unlike most courses you have taken thus far, the work you will do this semester will be largely independent and performed out of class. You will do in-depth research into defined a body of case law, develop and argument to support your position, draft a substantial written brief, and defend you position in oral argument before a court of volunteer judged.

After drafting sections of a brief and doing research during the beginning of the semester, you will write a first draft of an argument section in an appellate brief. I will provide written comments on your first draft argument section and conference with you about your work. After your conference, you will revise and edit your brief as needed and submit a full final draft of an appellate brief. Your final draft is due two weeks after your conference.

The final stage of the course are the oral arguments. To prepare, we will discuss oral argument as a class, we will hold practice argument sessions, and each student will give a short presentation to the class. You will also have an opportunity to practice oral argument with the members of the Moot Court Advisory Board, a group of 3L students who have demonstrated excellence in oral advocacy. Details about practice sessions will be provided mid-semester.

The following are my goals for you this semester:

1. Strengthen research and analytical skills
2. Learn how to develop a legal argument using a variety of different authorities
3. Strengthen legal writing skills in longer-format works
4. Increase familiarity with Bluebook citation format
5. Learn how to present oral arguments before a court

## COURSE MATERIALS

Required:

*The Bluebook: A Uniform System of Citation* (21st ed.)

Megan McAlpin, *Beyond the First Draft* (2nd ed.)

All other required course materials will be posted on the course Canvas page. In addition to required readings, you will need to conduct independent research. This will include legal and nonlegal research.

## ASSIGNMENTS

Students must turn in (1) a research memo, (2) a statement of the case, (3) argument first draft, and (4) a complete final draft of the brief. Students must also review their critiqued first draft prior to their conference and attend the conference to discuss the first draft. Finally, students must participate in practice and final oral arguments.

Written assignments must be double spaced and in 12-point Times New Roman. Margins must be one inch on all sides. Page numbers must be centered at the bottom of each page. Page numbers must also be in 12-point Times New Roman. The text of all sections of the brief should be fully justified.

Each written assignment will be evaluated by looking at the quality of the legal research and analysis, organization, written style, use of citation, compliance with formatting requirements, and other appropriate criteria. Oral argument will be evaluated by looking at the student's depth of knowledge about the law and case, responsiveness to questions, engagement with judges, time management, style, and other appropriate criteria.

Grades will be calculated as follows:

Final Draft of Brief:	50 points
Final Oral Argument:	20 points
Course Participation:	30 points

Participation includes attendance, timeliness, class contribution, participation in conference, submitting assignments on time, and preparation for and participation in practice oral argument. Students are responsible for submitting assignments on time. Late submissions will reflect negatively on the student's participation grade.

Extensions for earlier assignments will be given where appropriate, but be aware that deadlines relating to the final draft and oral arguments are largely immutable. If you are struggling to complete assignments, email me or reach out to set up a meeting.

APPLICATION OF THE VLS HONOR CODE

The following offenses shall qualify as Class One Violations under Article V:

1. A student shall not plagiarize. Plagiarism is knowingly appropriating another's words or ideas and representing them in writing as one's own. Whenever a student submits written work, including an examination, as his or her own, the student shall not use the words of another without acknowledging the source. If the words of another are paraphrased or the ideas of another are used, there must be a clear attribution of the source.  
  
...
4. In connection with an examination or an academic assignment, a student shall neither give, receive, nor obtain information or help in any form not authorized by the instructor or the person administering the examination or assignment.
5. A student who is taking or has taken an examination shall not discuss any part of that examination with another student who is taking the examination or will be taking a deferred examination when such a discussion is likely to endanger the security of the examination questions.
6. A student shall not submit any written work, or part thereof, prepared, submitted or used by [them] for any other purpose (such as work prepared for or submitted in another course, work prepared for a law journal, clinic, law firm, government agency, or other organization), or prepared by another, except upon specific disclosure of the facts and receipt of permission from the professor to whom the work is submitted.
7. A student shall not take or copy materials of an academic nature belonging to another student without the express consent of the latter.

...

The following offenses will qualify as Class Two Violations under Article V:

1. A student shall not make a false statement regarding an academic matter to a law school faculty member, administrator or to the Honor Committee.  
  
...
3. A student shall not obstruct the Honor Code process.
4. A student shall not engage in any other conduct, which in the determination of the Deputy Vice Dean and the Honor Committee evidences dishonesty or a manifest lack of fitness to practice law.

...

Unless otherwise specified in the examples above, a student is guilty of a violation of the Honor Code if they acted purposely, knowingly or recklessly. A student acts purposely if the student's conscious object is to engage in prohibited conduct or to cause a prohibited result. A student acts knowingly when that student knows that such conduct is prohibited or knows that [their] conduct will cause a prohibited result. A student acts recklessly when that student consciously disregards a substantial and unjustifiable risk that [their] conduct will fall within prohibited conduct or cause a harmful result.

It is not a defense to charges of violating this Honor Code for a student to claim [they have] not received, read or understood this Honor Code, or is otherwise ignorant of its provisions. A student is held to have notice of this Honor Code by enrolling in a Vermont Law School class.

#### Sanctions:

1. Class One Sanctions: If the Honor Committee members or the Vice Dean for Students conclude that the student has committed a Class One violation of the Honor Code as defined in Article III, Section B, the recommended penalty shall be suspension, expulsion or withdrawal of an awarded degree, unless the Honor Committee members or Vice Dean find substantially mitigating circumstances warrant a lesser penalty as set out in the following paragraph. . . .
2. Class Two Sanctions: If the Honor Committee members or Vice Dean for Students conclude that the student has committed a Class Two violation of the Honor Code as defined in Article III, Section B, the Honor Committee members or Vice Dean for Students shall recommend such lesser penalty as they deem appropriate, including, but not limited to: a warning; a fine; probation; reference to counseling; or notation in the student's permanent file, unless the Honor Committee members or Vice Dean find substantially aggravating circumstances warrant a harsher penalty as set out in the preceding paragraph.

#### Specific Application of the Honor Code to Appellate Advocacy

The written and intellectual product used in this course must be solely the result of the students writing and research. The assignments students submit must be their own work product, including all research, writing, and citation. A student must not write another student's brief. Students must not give an outline, a list of cases, or a completed assignment to another student. Both the student who loans the work product and the student who uses it are equally at fault. Students must not consult any attorney, judge, faculty, instructor, Legal Writing Specialist, ASP mentor, or other student on any question dealing with the substance of the Appellate Advocacy problem. Note: students are permitted to meet with VLGS's designated Legal Writing Specialist solely for the purpose of receiving feedback on their writing. The Specialist may not provide feedback on the substantive arguments or research contained therein.

After final briefs are turned in, students may practice their oral arguments with members of MCAB and classmates as long as the student is not arguing against the classmate in final oral

argument rounds. Students may not practice their oral arguments at any time with any other faculty member or student.

Students must not obtain or review the briefs actually filed in the Supreme Court or any lower court on their Appellate Advocacy case, including amicus briefs and briefs related to the petition for certiorari, and any memoranda filed in the lower courts. Failure to follow this rule will be prosecuted as a Class One Honor Code Violation.

Cite the original source even if you put another person's ideas in your own words. The assignments you submit must be your own work product and not the work of another person or of Generative AI. Contributions from anyone or anything else – including AI sources – must be properly quoted and cited every time they are used. You may not give an outline, draft, list of cases, Generative AI prompts, or a completed assignment to another student. The student who loans the information and the student who uses it are equally at fault. (Cite: Prof. Anna Connolly).

### Acknowledgement of Authority

Whenever using the words or ideas of another writer, students must acknowledge the original source. If using the exact words of another person, students must use quotation marks and cite the source in Bluebook form. Cite the original source even when paraphrasing another's ideas. Never copy directly from a law review, case, or other written or oral material without indicating the actual author.

## WRITTEN ASSIGNMENTS

### Research Memo

The first written assignment of the semester is a memo in outline form summarizing the major issues in the case, and including the research students have completed at the time of the assignment. The outlined research memo should include the three strongest arguments in your favor; the three strongest arguments in your opponent's favor; authority you have found already and how you intend to use it, as well as sources you intend to consult; and your developing theory of the case in paragraph form. For this assignment, students must use the Research Memo template posted on the course Canvas page.

### Statement of the Case

The second written assignment of the semester is focused on drafting the statement of the case. The statement of the case must concisely and persuasively state the legal background, relevant facts, and procedural history of the case. Any fact used in the argument section must be included in the statement of the case. The statement of the case must include record citations as appropriate. The statement of the case should be about three to five pages long, depending on the complexity of the case and length of the record.

### Argument First Draft

The third written assignment of the semester is a draft of the argument section of your brief. The argument section contains the party's arguments with respect to the question(s) presented, with clear and detailed reasons for these positions. The argument should be persuasively organized. The argument must cite authority and should be about ten to fifteen pages long, depending on the

complexity of the case and legal issues. The argument should be broken down into subheadings with a point heading for each sub-argument. The headings should be formatted according to the guide below:

I. MAJOR POINT HEADINGS, IDENTIFIED WITH A ROMAN NUMERAL, MUST CAPITALIZE EVERY LETTER OF EVERY WORD AND NOT BE UNDERLINED.

A. Minor point headings are identified with a capital letter and must be underlined.

1. Minor subheadings, identified with a numeral, must capitalize the initial letter of the first word and not be underlined.

### Brief Final Draft

The final written assignment of the semester is a complete final draft of an appellate brief. The final draft from the inside caption to the conclusion may not exceed 6500 words. The word limit includes citations. The final draft must include each of the following sections:

1. Title Page: A title page with the correct information is available on the Canvas course page for your use.
2. Question(s) Presented: The question(s) presented should state each issue clearly and succinctly without attempting to set out a full argument. The questions should not be worded identically to the questions set forth in the petition for the writ of certiorari. The questions presented must appear on a separate page numbered “i.” They 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 in the order and form in which they appear in the brief, with the letter or 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. The table of authorities must list each authority cited in the argument section of the brief and the pages on which each authority is cited. The citation must be in Bluebook form, but without pincites. If an authority is cited on five or more pages of the brief, use “passim” instead of listing all pages. You may divide the table of authorities into subsections with a subheading centered on the page for each section. Subsections include cases, statutes and regulations, and other sources.

5. Inside Caption: A draft inside caption with the correct information is available on the Canvas course page for your use. Note that the inside caption begins a new page numbered “1” and is the first page for the final brief word count given above.
6. Opinions Below: This section should give the full citation to the pertinent opinions and judgments delivered in the courts below. The opinions below statement should begin on the same page as the inside caption.
7. Statement of Jurisdiction: This section must include the dates of the opinion on appeal, the petition for certiorari, and the grant of the petition. The jurisdictional statement must also give a citation to the statutory provision that supplies the Court with jurisdiction to review the case.
8. Constitutional and Statutory Provisions: This section should quote any constitutional provisions and statutes that are relied upon in the argument section. If the provisions involved are lengthy (half a page or more), only provide the citation and indicate that the provision’s full text is included in an appendix to the brief.
9. Statement of the Case: See statement of the case assignment description above.
10. Summary of the Argument: The summary of the argument is a summary of all arguments made in the argument section of the brief. The SOA should strongly communicate your theory of the case. The SOA should be about two to three pages. This section should conclude with your specific request for relief. The SOA should not contain citations to authority, except if you are quoting authority.
11. Standard of Review: The standard of review is a short paragraph telling the Court how much deference to give the lower court’s decision. The standard of review must cite U.S. Supreme Court authority or other binding rules as support for the applicability of the particular standard of review.
12. Argument: See argument first draft assignment description above.
13. Conclusion: The conclusion must specify the precise relief requested. The conclusion may also include a very brief (one paragraph maximum) summary of the argument. The conclusion may not include new arguments, new facts, or citations to authority.
14. Signature Block: The signature block must appear as follows and must include the student’s electronic signature.

Respectfully submitted,

---

Student’s Name  
Attorney for (Party Designation)

15. Appendices: The appendices contain the quoted provisions from the Constitutional and Statutory Provisions section. An appendix is only necessary if the pertinent provisions are lengthy (more than half a page). Each appendix should be lettered, e.g., Appendix A, and should begin a new page. Page numbers must be included, with the first page of the first Appendix numbered “1” and all further pages consecutively paginated.

#### Due Date of Final Draft

To be on time, you must follow the instructions below:

1. Upload a copy of your final brief in Microsoft Word to Canvas by 11:59pm two weeks after your individual conference. Reuploads are not permitted and only the first file you upload to Canvas will be graded.
2. Upload a pdf of your final brief to the Appellate website (instructions to follow) by 11:59pm two weeks after your individual conference.
3. Email a pdf of your final brief to your final oral argument opponent before your oral argument (more specific instructions to follow).

#### Late Policy Regarding Final Draft

The conference schedule is set up so that final briefs will be due no less than 8 days before the final argument. This is to give enough time to process the submissions, disseminate them to the judges, and to give the judges enough time to read your briefs and prepare for the arguments. Therefore, any student who has not submitted their final brief by three days before their final argument will be pulled from the docket, will be unable to argue, and will receive a failing grade for that portion of the course.

#### ORAL ARGUMENTS

##### Practice Arguments

Mandatory practice arguments will occur before final arguments. I will ask questions during the practice argument and provide feedback after the practice argument. Students are encouraged to practice oral arguments with members of MCAB as well.

##### Final Arguments

Final arguments will take place at the end of November and in early December. Students will argue before a panel of practicing attorneys, who will ask questions during argument and provide general feedback after argument. A member of MCAB will observe final arguments. Volunteer judges and the MCAB member will score final arguments for purposes of placement in Advanced Appellate Advocacy. I will also provide a score for placement in Advanced Appellate Advocacy, and I will grade the final argument for purposes of a grade in this course.

Each student will be allotted twenty minutes for final argument. Counsel for petitioner may reserve one to three minutes for rebuttal. A party is not required to use any or all of the reserved rebuttal time. Judges can use their discretion enforcing time limits. Petitioner will open the



argument. Respondent will argue after petitioner. Students are prohibited from arguing a legal point that is not raised in their brief or their opposing counsel's written or oral argument. Students may rely only on authority cited in either their brief or their opposing counsel's brief. Petitioner may not raise issues in rebuttal that were not raised by respondent during the oral argument, even if those issues were raised in respondent's brief.

#### CONCLUSION

Appellate Advocacy is a demanding course and one in which you must keep up and meet deadlines. That said, this course is also deeply engaging and will (hopefully) be a highlight of your legal education. By the end of this semester, you will each be an expert in our chosen case's field of law, have experience arguing before a court, and will have personally crafted a meticulously researched and substantial piece of written scholarship. My hope for you all is that, though stressful, you will also be able to enjoy this class for the incredible educational opportunity that it is. I look forward to working with you all.