

APPELLATE ADVOCACY SECTION 5  
FALL 2024: SYLLABUS  
CATHERINE FREGOSI  
[cfregosi@vermontlaw.edu](mailto:cfregosi@vermontlaw.edu)  
(802) 831-1318

Class time: Tuesday & Thursday, 11:20-12:35

Office location: Debevoise 314

Office hours:

- Drop in: Monday & Wednesday, 2:10-3:25
- By appointment: email me or talk to me after class to set up an alternate time

COURSE OVERVIEW

In appellate practice, attorneys represent clients appealing trial court decisions to an appellate court. The first step in any appeal is drafting an appellate brief, which presents the client's written legal argument on the issue(s) presented. After each party files a brief, the parties present oral argument in defense of their legal arguments. An appellate argument does not have a jury, witnesses, or evidence; instead, the appellate attorney simply talks with the court about the legal issues and explains why the attorney's client should prevail. Each attorney argues for a set amount of time, without any interruptions from the other party or the other party's attorney. Each appellate argument is before a panel of at least three judges, who work together to decide the case.

In this class, we will simulate the appellate process described above, working through briefing and argument in a pending U.S. Supreme Court case. Each student will write a brief in defense of their assigned client. In the beginning of the semester, we will discuss the issues, core precedent, and possible argument themes, but most of your research and thinking about the case will be done independently outside of class. Early in the semester, students will turn in a research memo and some sections of the brief and receive written feedback. About halfway through the semester, each student will turn in a draft argument section. Students will then meet with me individually to discuss their work. After meeting with me, students will have two weeks to independently revise and edit their work before turning in a full final draft of their appellate brief. At the same time, students will begin practicing their oral arguments. Students will have two practice arguments with me, one before turning in the final brief and one after turning in the final brief. Each student will present oral argument before a panel of volunteer judges at the end of the semester. Throughout the semester, you will sharpen your analytic, research, writing, and oral advocacy skills.

The following are my goals for you this semester:

1. Learn how to develop a legal argument using a variety of kinds of authority
2. Practice analyzing facts and law with precision
3. Practice writing in a clear, persuasive style
4. Strengthen research, analytical, and citation skills
5. Become familiar with the appellate brief format and basic rules of appellate practice
6. Practice oral presentation skills

## COURSE MATERIALS

Required:

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

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

Noah Messing, *The Art of Advocacy*

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

## ASSIGNMENTS & GRADING

Students must turn in a research memo, statement of the case, argument first draft, and complete final draft of the brief. Students will also need to attend class, a draft conference, two practice oral arguments, and a final oral argument.

Written assignments must be double spaced and in 12-point Times New Roman or CG Times. Margins should be one inch on all sides. Page numbers should be centered at the bottom of each page and in 12-point Times New Roman or CG Times. The text of all sections of the brief should be fully justified. Points will be deducted from final brief grades for failure to follow these formatting requirements.

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 percent
Final Oral Argument:	30 percent
Professionalism:	20 percent

Professionalism includes attendance, timeliness, class contribution, quality of ungraded assignments, participation in conference, and preparation for and participation in practice oral argument.

Students are responsible for submitting assignments on time. Assignments are due by 11:59 pm. An assignment is late if it is submitted at midnight.

Students will receive a ten-point deduction for each day that a graded assignment is late unless the student receives prior permission from me to submit the assignment late. A final draft submitted more than five days past the draft deadline will receive a zero. Students who turn in final drafts

more than five days late will not be permitted to participate in final oral arguments and will receive a zero for oral argument.

Because of the nature of this class, I can give extensions on the final draft and final oral argument in only the most extraordinary circumstances. Extensions on other assignments will be given only in rare circumstances and only due to unforeseeable circumstances outside a student's control. If you are struggling to complete assignments, email me or reach out to set up a meeting.

#### ATTENDANCE

Class is required. Students are also required to attend a first draft conference, two practice oral arguments, and final oral argument. In keeping with the VLGS attendance policy, “[s]tudents who are absent from twenty percent (20%) of the regularly scheduled classes . . . shall be automatically withdrawn from the course with a grade of F-Wd.” Regularly scheduled classes include a first draft conference, two practice oral arguments, and a final oral argument.

#### 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 she or he acted purposely, knowingly or recklessly. A student acts purposely if it is the student's conscious object 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 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 obtain or review the briefs 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.

This class has two teaching assistants. Students may meet with TAs at any time to discuss the case, issue, research, theories of the case, assignments, citation, writing, oral argument, etc. Students may submit draft assignments to the TAs, and the TAs may give students feedback on their draft assignments. Students may also practice oral argument with the TAs. Students may not discuss anything related to the case, issue, research, or drafting with any other person. After final briefs are turned in, students may practice their oral arguments with classmates as long as the student is not arguing against the classmate in final oral argument rounds. Students will also have an opportunity to practice oral argument with MCAB. Students may not practice their oral arguments at any time with any other faculty. Failure to follow this rule will be prosecuted as a Class One Honor Code Violation.

### 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 concisely and persuasively states the legal background, relevant facts, and procedural history 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, flush with left margin and in bold.**

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 posted on Canvas.
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. Divide the table of authorities into the following three sections, with a subheading centered on the page for each section:
  - a. Cases: The first part of the table of authorities lists the cases cited in the brief in alphabetical order by the first party in the case. If the list of cases is especially long, it may be further divided by court and then alphabetized within each subsection.
  - b. Constitutional and Statutory Provisions: Following the list of cases, include a list of all constitutional provisions, statutes, regulations, ordinances, and model code and act provisions cited in the brief. Use the hierarchy of authority to list sources: all federal sources before state sources; within federal and state categories, begin with constitutional provisions, then statutes, then regulations. Model provisions should be listed last.
  - c. Other Authorities: Following the list of statutes and constitutional provisions, include a list of all other authorities cited, such as law review articles, treatises, dictionaries, websites, and rules of procedure. These sources may be subdivided by category if the list of sources is particularly long. Alphabetize sources by the beginning of the citation.
5. Inside Caption: A draft inside caption with the correct information is posted on Canvas. 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 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 persuasively 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. I will not accept emailed drafts.
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).



## ORAL ARGUMENTS

### Practice Arguments

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

### Final Arguments

Final arguments will take place in November. Students will argue before a panel of 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 invitations to Advanced Appellate Advocacy. I will also provide a score for invitations to 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 two minutes for rebuttal. A party is not required to use any or all 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. If you fall behind or miss deadlines, it will be extremely difficult to catch up and produce a decent final brief. That said, appellate practice is my favorite kind of legal work, and I hope that you enjoy this class. I look forward to working with each of you and good luck!