

FALL 2017  
APPELLATE ADVOCACY  
SYLLABUS & RULES  
PROF. REBECCA ZIETLOW

**Phone:** (office) (802) 831-1343

**E-mail:** [rzietlow@vermontlaw.edu](mailto:rzietlow@vermontlaw.edu)

**Class:** Tuesdays, Thursdays 3:35-4:50

**Office Hours:** Wednesdays 1:00-4:00 and by appointment. I will also occasionally schedule extra office hours around the time assignments are due.

**Office Location:** Rogers 106

### **INTRODUCTION AND OVERVIEW**

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 VLS each Appellate Advocacy section focuses on a real case currently before the United States Supreme Court. This summer I have chosen an important voting rights case, *Husted v. A. Philip Randolph Institute*. Although you will attend classes, the bulk of your work will be done individually, researching and writing assignments pertaining to this case. I will provide written critiques of your draft Statement of the Case, Point Headings, Summary of Argument and Argument. We will also meet to discuss your brief as you are redrafting it. You will then submit your final draft for grading. In addition to writing the brief, you will also argue the case before a panel of lawyers. AND, if your schedule permits, you may attend the actual oral argument at the United States Supreme Court. The following are my goals for you this term:

- Practice analyzing and applying complex facts
- Strengthen research and analytical skills
- Strengthen persuasive writing skills
- Learn and practice oral presentation skills
- Prepare for AAA and moot court competitions (if interested)
- Learn about the National Voter Registration Act of 1993 and the Help America Vote Act of 2002
- Practice using statutory interpretation tools from Leg-Reg
- Practice good citation form!
- Understand the ethical obligations of all attorneys to zealously advocate for their clients

## MATERIALS

The following materials are required:

Materials on Course TWEN Website

Carole C. Berry, Effective Appellate Advocacy: Brief Writing and Oral Argument (4th ed. 2009).

Harvard Law Review Association, *The Bluebook: A Uniform System of Citation* (20th ed. 2015) (but you can get away with the 19th if you already have it)

## EMAIL

The main way that I will communicate with you is through your VLS email account. I expect you to check your VLS email at least daily. I also expect that any email to me will be professionally written. I will post a supplemental reading on professional emails for your reference.

## 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 write 1) a Preliminary Outline; 2) a draft Statement of the Case; 3) a draft of your point headings; 4) a draft of the Summary of Argument and Argument; and 5) a final brief. You must also participate in practice and final oral arguments.

### RULE 3: FORM OF WRITTEN ASSIGNMENTS

Written assignments must be typed and double spaced (except the Preliminary Outline, which may be handwritten). 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. Written assignments not conforming to these rules may be rejected and returned to the student or may result in a lower grade.

### RULE 4: GRADING

Final Brief:	60% of final grade
Oral Argument:	25% of final grade
Class participation:	15% of final grade

Class participation includes class attendance and preparation; the quality of your drafts; participation in class discussions; preparation for and participation in conferences; and preparation for and participation in practice oral arguments. You cannot participate in class if you do not attend regularly, so **class attendance is mandatory**. Points will be deducted from the final grade of any

student who has two unexcused absences. **A student who has three or more unexcused absences will receive a failing grade of “F” for the course.** Points may also be deducted from a student’s final grade for repeated failures to arrive for class on time or for leaving class early. Please notify me if you will not be in class on a certain day prior to the class time. However, prior notice does not mean the absence is excused. I will excuse an absence based on illness, religious holidays or other compelling reason with prior notice.

#### RULE 5: TIMELY SUBMISSION OF ASSIGNMENTS

Any assignment that is more than 5 days late without prior permission will automatically receive a failing grade. Unless otherwise specified, all assignments are due on TWEN. When turning in assignments on TWEN, you should receive a confirmation email. If you have not received that email, your assignment has not likely uploaded correctly. Please keep the TWEN confirmation email until the class is over. As a backup for any problem with TWEN, you may email me the assignment before the deadline. Please note, computer malfunction is not an acceptable excuse for a late assignment. Please back up your work frequently and use the computer labs at school if your computer has a virus or is otherwise unreliable.

**If you have any condition that might require special arrangements for Appellate Advocacy, including oral argument, you should inform me and/or make a formal request for accommodation with the administration as soon as possible after learning of the need for accommodation.**

#### RULE 6: THE HONOR CODE

The Vermont Law 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. Students must not discuss their brief with any faculty member other than me, members of the Academic Success Program and the Writing Specialist. **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. Failure to follow this rule will be prosecuted as a Class One Honor Code Violation.**

#### RULE 7: PRELIMINARY OUTLINE

Your first assignment will be an outline summarizing the major issues in the case. The outline should include the strongest arguments in your favor; the strongest arguments in favor of your opponent; authority you have found already and sources you intend to consult; and your (developing) theory of the case in paragraph form. The page limit is 2-4 pages. The Preliminary Outline form is available on the course TWEN website. **It is due by noon on Friday, September 15, in the TWEN drop box.**

#### RULE 8: STATEMENT OF THE CASE

The Statement of the Case must succinctly state the relevant facts and the procedural history of the case. Any fact used in the argument section must be included in the Statement. You must

include “record cites” in your Statement of the Case. The page limit for this assignment is 4-6 pages.  
**A draft of the Statement of the Case is due by noon on Friday, September 29, in the TWEN drop box.**

#### RULE 9: POINT HEADINGS

The point headings are an outline of your argument. Each heading must be a complete sentence. 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. Minor point 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 also due in class noon on Friday, September 29, in the TWEN drop box.**

#### 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 Argument should be between 13-16 pages.

**One copy of the Summary of Argument and Argument is due by noon on Wednesday, October 18 in the TWEN drop box.** I will hold conferences the following week to discuss your draft with you. I will critique the brief and return it to your mailbox at least one day before our conference.

#### RULE 11: FINAL DRAFT OF BRIEF

The page limit for the final draft of the brief is 25 pages. The Table of Contents and Table of Authorities are not counted toward the page limit. All briefs should be double-sided. Do not bind the briefs. The final draft of the brief should contain the following sections:

1. Title Page. See the Course Packet for an example.
2. Question(s) Presented. The Question(s) Presented should state each issue succinctly without attempting to set out a full argument. Question(s) presented normally will not include names, dates, amounts, or similar particulars. The question(s) must appear on a separate page numbered “i” immediately following the cover page. The question(s) 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, code sections, and 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 jurisdictional 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, and code sections 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. 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.

Respectfully submitted,

\_\_\_\_\_  
Your Name  
Your Address

14. Appendix. The appendix is optional. It cannot contain any argument. Use it only to quote lengthy statutory provisions, etc.

### **RULE 12: DUE DATE OF FINAL DRAFT**

Your final draft is due two weeks after your individual conference. To be "on time," you must follow the below instructions:

1. Upload a copy of your final brief in Microsoft Word on TWEN **no later than 8:00 am, two weeks after your individual conference.**
2. Upload a .pdf of your final brief to the Appellate website (instructions to follow) no later than 8:00 am, two weeks after the student's individual conference. Note, the entire brief, including any appendix, must be in one .pdf.
3. The version you upload to TWEN and the Appellate website is the final version you will be graded on and evaluated on for AAA. You may not re-upload the document without losing 5 points. **Be sure that you are uploading the correct version.**
4. Within 24 hours of the TWEN due date and time, turn in **one hard copy** of your

final brief to my mailbox in Rogers 106. (*Reminder: print on both sides of the paper*).

5. In addition, you must exchange one copy of your brief with your opposing counsel one week before the date of your oral argument.

### RULE 13: PRACTICE ARGUMENTS

A. Mandatory practice arguments will occur before the final argument. The practice arguments will be videotaped. I will post a link to the video (privately) on YouTube and provide you with the link. I will ask questions during the practice argument and provide feedback after the practice argument. I encourage students to study the video and look for additional ways to improve their presentation.

B. Students are also encouraged to practice oral arguments with others, including their opponent, friends, members of MCAB and classmates. Although students may not attend a formal student argument in their case until after they have argued, they may attend arguments in the other cases before arguing their own. Further, students are encouraged to attend their case's oral arguments before the Supreme Court in Washington, D.C., if possible, depending on when the argument is scheduled. If you decide to attend the argument, please be sure to secure prior approval from any professor whose class you will miss.

### RULE 14: FINAL ARGUMENT LOGISTICS

A. I will assign sides and pair students for oral argument.

B. **Final arguments will take place the week of November 13-16.** Students will argue before a panel of judges, composed of two to four lawyers and judges (and me); only I will grade the argument. While the remaining judges do not assign grades, they do evaluate the argument for MCAB. Each student will be allotted **twenty minutes** for final argument. Counsel for Petitioner can reserve up to **three minutes** for rebuttal. A party is not required to use all or any of the rebuttal time reserved. Judges can use their discretion enforcing time limits.

C. 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 opponent's brief, unless raised by the Court. Students may rely only on authority cited in either their brief or the brief of their opponent. Petitioner may not raise issues during rebuttal that were not raised by the Respondent during the argument itself, even if they were raised in Respondent's brief.

