Appellate Advocacy – Spring 2017

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Welcome! I am delighted to work with you this semester to discuss and study appellate advocacy.

Class schedule
Class will be Wednesday starting at 6:00p. I will need to work with you on scheduling in order to accommodate weather, travel, and other schedules. As you will see on the schedule below, I already know I'll be gone one week in April. Usually, I have stretched out the class period to make up for one or two missed weeks. This semester I may also be able to use some of the regular 1:00pm makeup slots. We will talk during the first session about our options.

Text
We will use Daniel P. Selmi’s book, “Principles of Appellate Advocacy” (Wolters Klower 2013). I will also post readings on TWEN, and send you to read some on-line materials.

Class content and outline
We will begin the semester by discussing the fundamental question of the appellate courts’ role—which is reflected in and constrained by “standards of review.” I’d love to then move through the appellate process. But if we did that, and I had you write briefs, you wouldn’t start until well into the semester. So instead, we will then address the parts of an appellant’s brief—and the principles required to draft such a brief. We will then step back and go through the appellate process, starting with preserving error and filing a notice of appeal. During the semester you will draft an appellant’s brief, a portion of a respondent’s brief, and a draft opinion. There will also be a graded oral argument assignment that will include a brief oral presentation, and a semester-end quiz.

Here is the preliminary schedule, without weather or other cancellations—and without having to carry over topics because visitors took much of a class session. But perhaps, using additional minutes each night, we can front-load the course a bit.

<table>
<thead>
<tr>
<th>Session</th>
<th>Topics</th>
<th>Reading</th>
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<tbody>
<tr>
<td>1. Jan. 18</td>
<td>Introduction to appellate concepts and courts; standards of review; appellate jurisdiction / jurisdictional statements</td>
<td>Selmi pp. 4-6, 29-35</td>
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<tr>
<td>3. Feb. 1</td>
<td>The role of briefing; statements of Facts</td>
<td>Selmi, 21-28, 47-56</td>
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<td>4. Feb. 8</td>
<td>Argument and legal writing; assembling the brief</td>
<td>Selmi, pp 14-18, 57-127</td>
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<td>5. Feb. 15</td>
<td>Preservation of error; appealability and finality</td>
<td>Selmi, pp 1-4</td>
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<td>6. Feb. 22</td>
<td>Whether and how to appeal; notice of</td>
<td>Selmi, pp. 6-8</td>
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Course assignments/grading:
The grading for this course will be based on participation, writing briefs and a draft judicial opinion, a submission regarding oral argument (form is still in development), and a quiz. We will use an actual appeal—one in which I provide you with the record, but the briefs have not been filed by counsel. You will first write key portions of an appellant’s brief. I will review and comment on those without grading them. You will then submit a complete appellant’s brief. You will then write a portion (probably just the argument) of a respondent’s brief in response to an appellant’s brief. There will be an oral argument assignment, with written and oral components. Finally, you will draft a proposed judicial opinion for an appeal. There will be a quiz on the last day of class, covering some of the most important points that we discuss in class.

Grading will be as follows:
1. Class participation 10 points
2. Appellant’s brief 35
3. Respondent’s brief 20
4. Oral argument submission 15
5. Draft opinion 15
6. Quiz 5

Class participation
I expect students to attend and actively participate in all classes – including asking questions, especially of our visitors (judges, former judges, court staff, appellate lawyers). Some weeks I will assign something to read or watch that will be the basis of part of our discussion. This is a small class, and I will use a flexible, discussion-oriented format.

Texts
In addition to the text, we will use materials that are publicly available. I suggest that you bookmark or download the following for easy access:
Missouri Supreme Court Rules of Civil Procedure - Rules Relating to All Appellate Courts
http://www.courts.mo.gov/page.jsp?id=677

Missouri Court of Appeals – Local Rules
Eastern District
http://www.courts.mo.gov/page.jsp?id=161

Southern District
http://www.courts.mo.gov/page.jsp?id=224

Western District
http://www.courts.mo.gov/page.jsp?id=243

Federal Rules of Appellate Procedure
http://www.law.cornell.edu/uscode/html/uscode28a/usc_sup_05_28_10_sq3.html
or

Local Rules of the Eighth Circuit

8th Circuit Appeal Preparation Information
http://www.ca8.uscourts.gov/appeal-preparation-information

I will send links to other items throughout the semester.

I recommend reference to, as comprehensive resources on Missouri appellate practice:

Card and Freed, MISSOURI PRACTICE: APPELLATE PRACTICE v. 24 (West)

Missouri Bar Deskbook: APPELLATE COURT PRACTICE (5th ed. 2002 and 2007 Supp.)

Statements

Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The law school community regards breaches of the School of Law’s Honor Code as extremely serious matters. Sanctions for such a violation may include academic sanctions such as failing the course, and disciplinary sanctions ranging from probation to expulsion. Please consult me when in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating.

Students with Disabilities

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in
case the building must be evacuated, please let me know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), S5 Memorial Union, 573-882-4696, and then notify me of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

**Intellectual Pluralism**

The University community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact the Departmental Chair or Divisional Director; the Director of the Office of Students Rights and Responsibilities http://osrr.missouri.edu/ or the MU Equity Office (equity@missouri.edu);

All students will have the opportunity to submit an anonymous evaluation of the instructor(s) at the end of the course.

**Recording**

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, generally, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students may not record discussions with guest speakers. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.