The Los Angeles County Bar Association
Appellate Courts Section Presents

Using Theme and Mechanics to Make Your Point on Appeal: Effective Writing Techniques

Tuesday, May 28, 2019

Program - 4:30 PM - 6:00 PM
Manatt Phelps, Los Angeles

1.5 CLE Hours (Includes 1.5 Hrs of Appellate Courts Specialization Credit)
Katy Graham is a Senior Research Attorney for Division Six of the Second District of the California Court of Appeal and has served on the staff of four justices. Her twenty-five years of practice include six years of complex civil trial work as an associate at Howarth & Smith in Los Angeles and partner at Zilinskas & Jacobs in Santa Barbara, six years as a research attorney for Santa Barbara Superior Court, and thirteen years with the Court of Appeal. She will retire from the court next month to work on high stakes civil appeals as counsel to the California Appellate Law Group. Katy is Chair of the Advisory Committee on Appellate Courts for the CLA’s Litigation Section and a member of the Executive Committee of the Litigation Section. She served as a member of CJER’s Appellate Judicial Attorney Institute, a delegate to the Conference of California Bar Associations, a director and Chief Financial Officer of the Santa Barbara County Bar Association, and President of the Montecito Education Foundation. She teaches and presents widely on Legal Writing, Statutory Interpretation, and Appellate Advocacy at various forums which include the Appellate Justices Institute and the Appellate Judicial Attorneys Institute. She is a member of the Advisory Committee to the UCSB Paralegal Studies Program’s and former chair of the Santa Barbara College of Law’s Curriculum Development Committee.
Martin J. Tangeman is an Associate Justice of the Court of Appeal, Second Appellate District, Division Six. He was appointed to that position in 2016 after serving more than 14 years on the San Luis Obispo County Superior Court, including stints as Presiding Judge, Assistant Presiding Judge, and Civil Team Leader. He served on the Judicial Council of California from 2014-2016. He is currently Chair of the Advisory Committee on Civil Jury Instructions (CACI) and has served on that committee since 2006. He is a member of CJER’s Appellate Practice Curriculum Committee and has taught and presented at the Appellate Justices Institute, the Appellate Judicial Attorneys Institute, the Civil Law Institute, the Supervising Judges Institute, and the CLA’s Appellate Summit. He practiced civil litigation for 23 years prior to his appointment to the bench.
EFFECTIVE BRIEF WRITING TECHNIQUES

Use Theme and Mechanics to Make Your Point on Appeal

Hon. Martin J. Tangeman
Katy Graham

Effective Briefs Are:

- A Compelling Request For A Specific Disposition
- Efficient
- Easy to Follow
- Rooted in Law and Fact
- A Blueprint for the Opinion
Compelling

- Error – So What?
- Prejudice
- Miscarriage of Justice

Effective Advocacy

- Inquire
- Acknowledge
- Advocate

“Action Science” by Argyris, Putman and Smith
Advocacy

The appellate advocate has three tools:

- Selection
- Placement
- Level of Detail

Efficient

- Focused
- Free of Distractions
- Selective Use of Authority and Facts
  - Authority - Purpose? Level?
  - Facts - Material? Emotional?
The court cannot agree if it cannot follow your argument or find support for your points.

- Sequence - mapped
- Each point - clear
- Support – near and concise

**Issue Sequence**

- Default – As Presented By Appellant

- Options:
  - Re-Sequence to Put Dispositive Issues First
  - Re-Sequence to Cohere with Principals of Division
  - Re-Sequence to Cohere with Legal Framework
  - Group Issues for Efficiency
Issue Structure

- Lead each issue with a point.
- Each issue is governed by a legal framework: rules that can be broken down into component parts:
  - Elements
  - Steps
  - Factors
- The structure should reflect the legal framework

Map The Points

- Maps – a roadmap sentence explains the number and sequence of smaller units that lie ahead.
- It alerts the reader to an analytical divide
- Maps are essential
- Signs and signals are essential
**Sequence For Elements**

An element is a condition that must be proved for a party to succeed in its contention.

Sequence: Track governing rule, or put strongest first to emphasize.

**Sequence For Steps**

- A step is an element that must be addressed within a particular sequence.

- Sequence: No flexibility.
Sequence For Factors

- A factor is a condition that is weighed to determine an outcome.

- Sequence: Much flexibility. Track governing rule, or emphasize stronger factors with placement.

Rooted In Law And Fact

- Every point = [legal term of art] + [key fact]

- She “forfeited the claim” when “she did not object.”

- The expert’s fees were “not reasonably necessary” because “his opinion was inadmissible.”
Using Record Facts

- Selection
- Level of Detail
- Placement

Using Authority

- Signal the purpose for which you cite authority
  - For basic standard
  - For general rule
  - To explain a nuance/detail of general rule
  - To illustrate a rule or rule detail
  - To reinforce your argument by analogy
  - To identify a split in authority
  - To reinforce your argument with policy or intent
Selecting Authority

- Select level of authority that is appropriate to the purpose

Rule Based Structure

- State rule and explain “triggered” details
- Apply rule, tracking components
- Use precise terms of art from the rule in the application to make a point – do not vary terms of art
- Link the key term of art for each component to a legally significant fact
- Ex: [Term of art] because [fact]
Factor/Step Based Structure

- Rule statements name the factors or steps
- Faithfully track the named factors or steps
- Level of detail signals which factors or steps are significant
- Use rule details and case illustrations to explain any triggered nuances of the factors or steps
- Weave factual support in tightly

Case Analogy Structure

- Compare key facts to your case to urge similar outcome on sub-point
- Or compare dissimilar facts to urge dissimilar outcome
- This case is like *Case* in which [favorable outcome on component of law ] where [key facts]. Like the [fact] in *Case*, here [similar fact].
- This case is unlike *Case* in which [unfavorable outcome on key component of law] where [key facts]. Unlike the [fact] in *Case*, here [dissimilar fact].
Policy Based Structure

- Explain the policy that is at stake

- Root the policy in authority
  - Statutory declaration of purpose
  - Highest authority articulating purpose
  - Legislative history

- Explain how the policy will be advanced by the outcome you urge – weave in key facts

Approach To Writing

- Identify issues presented, follow them
- Sequence Issues – craft headings that identify the main issues
- Find authority to govern each, put it there in a concise legal framework
- Craft sub-points to support your contentions on each issue. Make them topic sentences
- Choose authority to use under each topic sentence
- Decide how you will use it (apply rule, analogy?)
- Tightly weave in select facts
Blueprint For The Opinion

- A Solid Affirmative Analysis
- Emphasizes
  Supporting Authority & Facts
- Acknowledges & Neutralizes
  Contrary Authority & Facts
- Dispositional Language

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Ciao