

MARYLAND STATE BAR ASSOCIATION
LITIGATION SECTION, APPELLATE PRACTICE COMMITTEE
and
THE TALBOT AND WICOMICO COUNTY BAR ASSOCIATIONS

NUTS AND BOLTS OF APPELLATE ADVOCACY

Thursday, March 15, 2007
5 – 7 p.m.

Historic Tidewater Inn
101 E. Dover Street
Easton, MD 21601

- ♦ Petitioning for Certiorari
- ♦ Appealable Judgments and Orders
- ♦ Appellate Advocacy Tips and Pointers

Hon. Dale R. Cathell, Court of Appeals of Maryland
Hon. Sally D. Adkins, Court of Special Appeals of Maryland
Kevin F. Arthur, Esq., Kramon & Graham, P.A.
Andrew H. Baida, Esq., Rosenberg | Martin | Greenberg, LLP

FUNDAMENTAL BRIEF-WRITING PRINCIPLES

Andrew H. Baida
Rosenberg | Martin | Greenberg, LLP
25 South Charles St., 21st Floor
Baltimore, Maryland 21201
(410) 727-6120
abaida@rosenbergmartin.com

A. BEGINNING THE BRIEF

Principle 1: Develop your theme

Principle 2: Know your audience

B. STATEMENT OF THE CASE

Principle 3: Advocate from the beginning, but do so without arguing

Principle 4: Paint a picture that is intended to persuade the reader to the writer's point of view

Principle 5: Continue to articulate the theme long after the introductory sentence

Principle 6: The statement of the case should be short, but long enough so that the reader understands the issues that the case involves

Principle 7: The statement of the case should make clear that the appellate court has jurisdiction over the appeal

Principle 8: As a general rule, all appellee's and respondent's briefs should include a statement of the case

C. QUESTION PRESENTED

Principle 9: The question should be (a) a brief argument summary, (b) adversarial and designed to elicit a favorable response, and (c) developed to include enough law and facts so that the reader has a sufficient understanding of the case

Principle 10: Provide a complete explanation of the issue on appeal

Principle 11: The question should emphasize the proper focus

Principle 12: Minimize the number of questions

Principle 13: Consider whether to condense your opponent's questions

D. STATEMENT OF FACTS

Principle 14: Tell a story

Principle 15: Establish and maintain your credibility with accuracy and fairness

Principle 16: Use the statement of facts to advance the theme of the brief

Principle 17: It is usually necessary to include a complete statement of facts in an appellee's or respondent's brief

Principle 18: State only those facts that are necessary to understanding the legal issues that the case involves

Principle 19: Provide record extract cites for each of the facts that you discuss

Principle 20: Discuss the decision being reviewed

Principle 21: Decide where to put the heart of the best facts

Principle 22: Consider when to repeat "great" facts

E. SUMMARY OF ARGUMENT

Principle 23: State the theme of the brief

Principle 24: Include all significant issues and sub-issues

Principle 25: Use the summary as an organizational tool

F. ARGUMENT

Principle 26: Give context before discussing details

Principle 27: Begin the argument by (a) succinctly identifying the central issue that the appeal presents, (b) stating why that issue was correctly or incorrectly resolved below, (c) setting forth the applicable law, and (d) saying why the law supports your position

Principle 28: Incorporate the standard of review and other pertinent information into the argument

- Principle 29: Use Principle 27 together with IRAC – Issue, Rule, Application, Conclusion
- Principle 30: Advocate your case, not general propositions
- Principle 31: Use topic sentences that move the argument forward
- Principle 32: Give context to paragraphs by telling the reader where you are going
- Principle 33: Use headings and subheadings to organize and provide context for the argument
- Principle 34: An argument that consists of separate issues should have a separate heading for each
- Principle 35: As a general rule, develop YOUR position before advancing any rebuttal argument
- Principle 36: Advance YOUR position even when writing a reply brief
- Principle 37: Give context to the cases you cite to enable the court to understand their relevance
- Principle 38: Use parentheticals to explain the significance of the cases you cite
- Principle 39: Use cases to support propositions
- Principle 40: Discuss material facts from other cases sparingly
- Principle 41: Be brief in distinguishing cases that the other side cites
- Principle 42: Carefully scrutinize the use of footnotes
- Principle 43: Keep the subject and verb close together
- Principle 44: Avoid using lengthy quotations, either from cases, statutes or other sources
- Principle 45: Sustain your argument with substance, not adjectives

G. CONCLUSION

- Principle 46: Do not include an argument summary in the conclusion

