

## **Appeals**

- 1. how trial lawyers drive appeal lawyers buggo (let me count the ways)**
  - 1.1. *they scribble on documents (Courts do not like seeing barnyard phrases in the margins of the reproduced record. I do not like spending my time slopping correction fluid on documents. And just try to eradicate underlining.)***
  - 1.2. *they don't understand the limited scope of appeal***
    - 1.2.1. *waiver***
    - 1.2.2. *court will not second-guess credibility***
    - 1.2.3. *many decisions are reviewable only for abuse of discretion***
- 2. documents to gather ahead of time (This is so you don't go bonkers on day 30.)**
  - 2.1. *order***
  - 2.2. *docket entries***
  - 2.3. *transcript order form(s)***
- 3. filing and service**
  - 3.1. *O+1 to lower court, no cover on appellate, two checks***
  - 3.2. *opponent***
  - 3.3. *judge***
  - 3.4. *court administrator***
  - 3.5. *court stenographer***
- 4. followup -- Statement of Errors Complained of on Appeal**
  - 4.1. *1925(b) compliance is critical***
  - 4.2. *document any extension -- written motion, timely order***
  - 4.3. *"concise" is not part of the title (Including it is like saying "Brief on White Paper", but attorneys do it anyway.)***
  - 4.4. *be brief but not too vague***
  - 4.5. *leave yourself some room for tailoring***
  - 4.6. *if sufficiency is at issue, specify the element of offense or claim that is missing***
- 5. docketing statement (Superior Court will send you this to fill out and send back with the documents below.)**
  - 5.1. *copy of Notice of Appeal***
  - 5.2. *copy of order***

**5.3. copy of docket entries**

**5.4. copy of opinion if issued**

## **6. original record**

**6.1. when record is received, briefing schedule will issue**

**6.2. typically lower court opinion is last thing filing office needs to transmit; you may get opinion and briefing schedule same day**

**6.3. you will get a list of what has been transmitted**

**6.4. make sure everything you need has been transmitted**

## **7. reproduced record**

**7.1. designate it ahead of time, however informally, unless your opponent agrees that this is not necessary**

**7.2. what to include/exclude**

**7.2.1. docket entries mandatory; if they are not computerized, consider cleaning them up by restating event in clear language and omitting irrelevant events**

**7.2.2. Notice of Appeal rarely needs to be included in state-court appeals**

**7.2.3. don't include stuff that isn't relevant; you can always refer to original record**

**7.2.4. ask whether court needs to actually see a document proving an event or can just infer event from the docket entries (proof of service is an example)**

**7.2.5. don't add stuff that is not part of record!**

**7.2.6. transcript is not the only thing that should be reproduced**

**7.2.7. if there is a transcript, the rules say to re-index the testimony (In reality, it isn't always done.)**

**7.2.8. if a document has been appended to multiple pleadings below, avoid duplication; indicate in index that item has been omitted but is at a specified earlier page number**

**7.2.9. you can also exclude irrelevant exhibits but indicate this**

**7.2.10. include lower court opinion even if redundant**

**7.3. putting it together** (This is mainly for those of you that came of age in the days of typewriters.)

**7.3.1. get a serious software program, it will save you a lot of grief; you want something that will make scanned documents searchable, that will combine PDFs without loss of quality, and that will paginate the final document**

**7.3.2. pagination at the top will aid screen review**

**7.3.3. scale documents that have excessively thin margins (outsource if necessary)**

**7.3.4. duplex with comb binding permits it to lie flat and permits faster**

reading

7.3.5. consider making yourself a notebook copy (duplex, three hole punch)

7.3.6. take the PDF rather than a hard copy to copy center -- less risk of misordering of pages

7.3.7. flash drives are easier to work with than CDs

#### **7.4. *consider filing it ahead of time***

7.4.1. clears space on desk, lets you zero in

7.4.2. downside: your research may indicate that an omitted document is important after all

7.4.2.1. *you can append it to the brief*

7.4.2.2. *you can refer to the original*

### **8. brief**

8.1. *if new to this, get some samples*

8.2. *cover*

8.3. *contents*

8.4. *table of citations*

8.4.1. avoid mid-citation line breaks

8.4.2. use consistent form, and always include the year for a case; otherwise you give the impression that you scribbled it down from a source with a skimpy style and couldn't be bothered to complete it

8.5. *statement of jurisdiction*

8.6. *standard AND scope of review*

8.7. *text of order*

8.8. *statement of the questions presented*

8.8.1. not too convoluted, it should not begin with "did the court err...", and it should indicate what the lower court's answer was to the question

8.9. *statement of the case*

8.9.1. take pains with accuracy

8.9.2. avoid argument, make balanced presentation

8.9.3. if either side could have written it, that is a good thing

8.9.4. sometimes you can put the reproduced record aside once you have written this part of the brief

8.10. *summary of argument -- rules state great care should be taken*

8.11. *argument*

8.11.1. consistent citation form (include year)

8.11.2. cover the basics in a way that avoids obvious dumbing down

8.11.3. how would an opinion sustaining your position read? (It would probably not say anything about your opponent's mother swimming after troop ships.)

8.11.4. pruefrede! run spell check but don't rely on it (Your ability to spot errors is diminished when you proofread something you just wrote.)

8.11.5. only one foolproof way to catch all errors: file the brief, then step into the hallway and reread your file copy

**9. reply brief? maybe, but not just to reiterate what your brief in chief said**

**10. oral argument**

10.1. *watch some beforehand*

10.2. *relax, within reason; no need to state everything in a stiff and overly formal way*

10.3. *don't address court as "you" (The worst argument I ever saw did this, but the guy won anyway.)*

10.4. *don't waste time giving information that is on the cover of your brief*

10.5. *don't treat the court like a jury*

10.6. *tact: "revisit" is key word if you are asking the court to overrule a prior decision*