Proskauer

Be the Advocate: Crafting a Winning Appellate Brief

Preparing a compelling and succinct appellate brief that effectively presents the strongest reasons for your position is critical. In this video, Partner Mark Harris shares best practices for crafting a powerful and persuasive appellate brief.

Transcript

Mark Harris: The appellate brief's primary function is to marshal in one place all of the best arguments for that side. It's very important that every part of your brief serve the same mission, which is advancing your position. Every single part of the brief should be important. There shouldn't be anything superfluous in it. So for that reason, you want to be tight and succinct and precise, usually no more than two or three different arguments.

It should be something where you actually feel the compelling force of the arguments.

The very first thing you need to do is to read everything you can find about the case: the decisions by the judge, the briefs that were submitted by both sides, trial transcripts, things like that, as well as any key pieces of evidence, and of course any other cases that are precedent for the argument you're making.

So you may want to outline your brief. If so, you want to remain flexible as new ideas come to you so that you can expand on, add to, or subtract from the arguments that you've already written out. If you are not inclined to write an outline, that's fine too. But what you should at least do is sketch out some general ideas about the arguments you want to make. An appellate court is going to be more concerned with legal arguments over factual arguments or equitable arguments. The difference between appellate practice and trial practice is that trial practice you can try out a lot of different things and you have a lot of time to talk to the court or to the jurors.

When you sit down to write your brief, remember that the appellate court is only going to have a single encounter with your brief. You've usually got only one shot to make your case. No brief goes in to the court, or no brief should go into the court, straight from your pen directly to the judges. You want to leave time for there to be a lot of editing to really hone your arguments and to really make them more precise.

You get the chance as appellate counsel to step back and say, "Now in the overall context of everything I'm seeing, what's really important for me to press?". The most valuable thing an appellate counsel can provide is a fresh rethinking of the entire case.

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