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Appellate Tips from the Defense Perspective

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APPELLATE TIPS FROM THE DEFENSE PERSPECTIVE

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1. Know the Rules that govern your document (opening brief, reply brief, supplemental brief, PDR, etc.) and follow them.
2. Make sure the record is complete; do not fail to supplement where appropriate. Dictate extensive notes of your reading of the record as you read it. NEVER delegate the reading of the record to anyone. As you dictate your notes, keep track on a legal pad of possible issues, events occurring during trial, and questions raised that need to be explored.
3. Use clear, concise and persuasive language in your document. Do not hesitate to use footnotes where applicable; they are powerful tools to “descend to particulars” and further explain the relevancy of a factual or legal proposition without cluttering the main text.
4. Always request oral argument and explain why oral argument is necessary and appropriate. “Oral argument is the last rather than the first meaningful opportunity for the parties to address the Court.” *The Art of Oral Argument on Appeal*, Marc J. Poster, ABTL Report, Summer 2004 at 1.
5. Use a detailed Table of Contents which parallels the sections and subsections of the brief.
6. Choose your issues strategically. Phrase them clearly and in the light most favorable to your position (given the applicable standard of review on appeal). Do not include frivolous issues. Not only does it take away from otherwise meritorious issues, it needlessly burns up precious limited space in the brief. What is your case really about? What happened (or didn’t happen) at trial that prevented your client from getting a fair shake? Are there isolated errors or is there a confluence of events that deprived your client justice? Open up files as to each legal issue that is present in your appeal and add copies of cases,

Also available as part of the eCourse

[Criminal Appeals: Tips from the Experts; plus Court of Criminal Appeals Judicial Panel](#)

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