

Appellate Remedies: Render, Remand, or Retreat?

Hon. Sarah Beth Landau,
First Court of Appeals

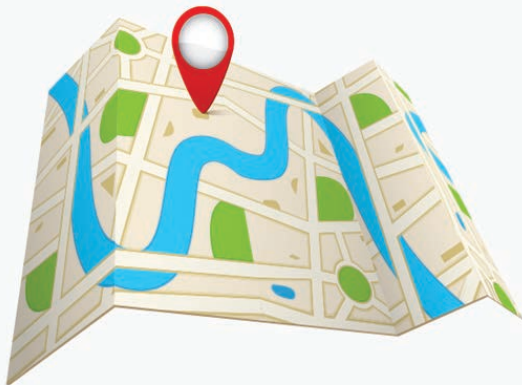
UT Law CLE:
State & Federal Appeals 2022

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Why Remedy Matters:

- A win isn't a win unless the judgment correctly spells it out.
- Remedial error can be difficult to fix.
- It doesn't have to be like this.



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Topics for Today:

Confusion about appellate remedies

Overview of appellate remedies

Court preferences on briefing remedies

Preservation at trial and on appeal

Focus on render vs. remand

Ethics in seeking remedies

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Confusion about remedies:

- Not a focus for law students, judges, or staff attorneys.
- Rules are not overly specific.
- Rules provide no onramp for parties to suggest judgment language or offramp to fix it.
- Parties are not usually focused on remedy until there's a problem.
- Problems arise when the opinion is about to issue.



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Overview of Appellate Remedies:

- TRAP 42-43:
Intermediate
Courts of Appeal
- TRAP 46:
Remittitur
- TRAP 56, 60:
Supreme Court



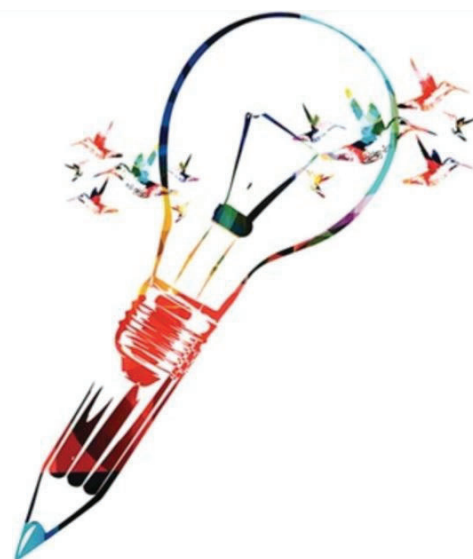
- Affirm
- Modify
- Reverse and Render
- Reverse and Remand
- Vacate
- Dismiss
- + “Other appropriate”
- + Remittitur
- + Costs
- + Sanctions?

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Style Tips to Elevate Your Remedy Practice:

- Use your desired relief as a roadmap for your brief.
- If asking for something unusual, find a rule or case to support the request.
- Weave the remedy through your brief so the prayer reads as the inevitable destination.
- Remedy is an excellent topic for oral argument.



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First appeared as part of the conference materials for the
32nd Annual Conference on State and Federal Appeals session
"Remedy: Remand, Render, or Retreat?"