

ADVANCED APPELLATE TIPS

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About the Author

Carmen Roe is an appellate and trial attorney with her own law firm in downtown Houston. She received her undergraduate degree from the University of Houston and later, her Juris Doctorate from St. Mary's University School of Law with a specialization in criminal law.

Immediately after graduation, Ms. Roe began working exclusively in criminal defense. Before opening her own law practice, Ms. Roe interned at the Texas Court of Criminal Appeals and clerked for Schneider and McKinney where she concentrated on appellate and post-conviction relief.

For the last 17 years of practice, Ms. Roe has owned her own firm where she specializes in criminal defense, including criminal trials, appeals, and post-conviction writs, in both state and federal court. Ms. Roe is board certified in criminal appeals by the Texas Board of Legal Specifications.

Among her numerous honors and areas of service, Ms. Roe was recently named a 2022 Texas Super Lawyer, 2022 Best Lawyers in America and Best Law Firms in America. She serves on the Board of Directors for the Texas Criminal Defense Lawyers Association (TCDLA) and National Association of Criminal Defense Attorneys (NACDL).

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Overview

This paper covers practical tips and appellate hacks for the busy practitioner in both prosecution and defense of appellate matters. In addition, it will explore some of the best practices in areas of appellate law with a focus on the most common and important areas along with helpful tips for anyone who wants to strengthen their appellate game

To keep it simple and advanced, I have organized this paper into a top 5 list of best advanced practices for the busy practitioner. Each one of the tips included applies to both sides of the bar and should be considered along the road to appellate victory.

THE TOP 5 ADVANCED APPELLATE PRACTICE TIPS

1. USING AUTHORITY THAT PERSUADES

All appellate lawyers should research the best caselaw they can find to persuade the court that they should win issues on appeal. It bears mentioning that you should also do thorough research to find the best cases, shepardize those cases and make sure you look at cases that oppose your position. This is the starting point. From there, I recommend you consider the following.

Use authority from the Court where your case is pending. Really persuasive authority is not just the cases on point or those that elevate your issues. Some of the most persuasive authority comes directly from the court you're trying to persuade. So, if your case is in the First Court of Appeals in Houston, you should be using the best cases from that court. This is true because generally courts of appeals will uphold their precedence and do not go outside of their authority unless there is a very good reason to do so and even then, it's based more specific facts, not law. So, too, if you happen to know who is on your appellate panel, you should also find good quotes to use that were written by the panel justices. This is very persuasive to your argument and helps keep the court in line with its precedence and makes the justices lean to your way of thinking, or really their way of thinking.

Use Published Opinions and Court of Criminal Appeals opinions – even if not published. The strongest authority is always the best. Strong authority is that from the court of appeals your case is pending in as well as the highest criminal court; the Court of Criminal Appeals. Then use other courts of appeals or, if necessary, unpublished opinions, to reinforce the strong argument you are making

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