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## **Court of Appeals Supporting Documents**

### **Reading a Case**

In the appellate court, there are no facts to be decided, no jury, and no witnesses. The difference between the lower court and appellate court is that while there isn't a dispute about the facts of the case, the disagreement is in how the law was interpreted and applied to the facts. The attorneys argue how they feel the law should be interpreted and applied to a panel of judges. The judges listen to the presentations, ask questions of the attorneys, and discuss the case privately as a group. The judges then either uphold or overturn the decision of the lower court. Judges are allowed to interrupt the attorneys to ask questions if clarification on a point in the case is unclear.

Every case starts with a fact pattern. This is the chain of events that leads to the two parties going to court. When a case is heard by an appellate court, it has already been decided once by a lower court. Usually, the party bringing the case to the appellate court is not satisfied with the decision of the lower court and wants the appellate court to change or overturn the decision.

Once you've identified the fact pattern, you must then read the authorities, or case law. These are other cases that may have been decided on similar facts in North Carolina or other jurisdictions. Your job is to pick out the facts in these cases that are most beneficial to your case. Remember, it's the way the law was applied to the facts that is in dispute, not the facts themselves. The important piece is that the interpretation of the case agrees with your position, the decision in that case does not have to be the same.

You will be given several authorities in your case file. These are the **ONLY** cases you may use in preparing your presentation. Believe us, you don't want to get bogged down in research at the law library – we may never see you again! This will be more than enough information for you to complete your work.

Don't wait to get started on this! As soon as you receive your case assignment, please go ahead and jump into the work of reading your cases and the corresponding case law. If you wait until the last minute to write your brief, then you will either end up turning in your brief late or submitting a brief that is not up to par. It won't take a ton of time, however it will take some effort on your part.



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## How to Write a Brief

You've read through the fact pattern, statute(s), and case law and now it is time to put your thoughts into a legal brief. When appealing a case, the lawyer is an advocate for his or her client. As an advocate, the lawyer exercises persuasion to achieve results favorable to his or her client in a variety of ways.

In a brief, the lawyer argues for his or her client. **A brief is a formal document a lawyer uses both to convince a court that the client's argument is sound and to persuade a court to adopt that position.** A brief must state the law, the facts of the case and the reasons for the conclusions in a clear and concise manner. The brief writer must attempt to make the client's position seem as strong as possible, emphasizing favorable arguments and minimizing the force of opposing arguments. It is not enough that the client's position appears logical or even desirable—it must be compelling.

The brief writer knows his or her basic conclusions in advance. His or her work involves a search for arguments and materials to support those conclusions and that show his or her client's position is stronger and should prevail.

An appellate brief is the document provided to a reviewing court challenging or defending a trial court's decision in a court. Appellate briefs focus more on broad policy because appellate courts are more concerned with establishing and applying rules that work in many situations. An appellate brief contains a statement of the legal issues, a statement of facts, an argument and a conclusion.

The following is a description of each element of a brief:

### TITLE PAGE

The title page of an appellate brief identifies the court, the docket number, the name of the case, the side represented and the name(s) and address(es) of counsel.

### TABLE OF CONTENTS

This lists each element of the brief and the page on which that element begins. In addition, the headings used in the argument section should be stated in the order they appear, with page numbers corresponding to their locations. This outline of your headings provides the reader with a concise and easily understandable summary of your argument.

### TABLE OF AUTHORITIES

The table of authorities lists all of the legal and other materials used to support the argument in an appellate brief and shows every page on which those materials are cited.



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This list of authorities (*list of case law used*) is useful because it permits a judge or opposing counsel to determine quickly what specific cases, statutes or other materials are being examined. It also provides a quick reference for complete citations to any materials used in the brief.

#### STATEMENT OF LEGAL ISSUES

This section states the legal issues addressed in the brief and alerts the court to those matters you intend to address. These questions should be slanted towards your client's position and should reflect your interpretation of the law. Your brief should project a positive tone; it should argue for a particular conclusion other than simply against the contrary conclusion. If you are appealing from an unfavorable trial court decision, for example, your question might begin: "Whether the trial court erred . . ." However, if your opponent is appealing the same decision, he or she might begin: "Whether or not the trial court properly held . . ." Both questions suggest an affirmative answer.

#### STATEMENT OF FACTS

The statement of facts in a brief is a descriptive account of the facts from your client's point of view. Although the statement cannot omit any damaging facts, it should be written to gain the court's sympathy for an understanding of your client's situation. Many lawyers and judges believe that the statement of facts is the most important section of any brief.

#### ARGUMENT

The argument is the foundation on which the rest of the brief is constructed and is the heart of the brief. Although the statement of facts is important and sometimes decisive, your client generally wins or loses based on the quality and substance of what you say in the argument. The argument should be well organized and clearly written. It should be short and to the point.

You should write this section of the brief in forceful and affirmative language, with your strongest arguments stated first followed by your client's position on the issues. You should have a separate heading for each issue you address.

#### CONCLUSION

This section describes what you want the court to do. State precisely what relief you are requesting from the court. The conclusion is usually one sentence in length. *i.e.*: " *We respectfully ask that the court affirm the decision of the trial court in this matter.*"

#### CITATIONS

Citing a case or other material means simply to refer. Attorneys cite legal authority to help support their legal arguments, primarily by showing the court that the cited case is an example as to how the court or other courts have decided similar questions or issues in the past.

Similarly, judges cite earlier cases in their opinions to support the rules of law they state in the opinion. A citation is like a title of a book or a magazine and provides several pieces of information. For example, one of the most controversial court decisions ever issued is Roe v. Wade, 410 US 113 (1973).



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As noted above, when deciding appeals, courts often consider how past cases that involve the same or similar issues have been decided and apply that information to the present case and issues. The earlier cases are known as 'precedent'. The precedents that past decisions or opinions establish are commonly known as 'case law' or 'common law'. Although different in form from statutory laws, case law is just as binding as a statute. Courts typically follow precedent in order to be consistent with their decisions. Attorneys want to convince the court that other cases have already been decided that way and that precedent has established a rule of law that agrees with their views of the case.

# Court of Appeals Additional Supporting Documents

## Courtroom Procedure

### When Addressing a Justice

- If the justice is standing, you should be standing as well
- Two knocks of the gavel is an indicator to sit down
- Accept criticism with grace – remember to say thank you after feedback and questions
- Refer to justices as “your honor”
- Treat justices with respect

### When Presenting Your Case

- Start with an introduction of you and your partner beginning with “May it please the court” and including your names and the side you will be arguing
- Appellant: In your introduction, reserve a designated amount of time or the remainder of your time for rebuttal
- Ask about the statement of the facts before you begin
- The partner who is speaking should stand
- Manage time between partners – you should be equally contributing to the argument
- Don’t address the opposing counsel directly. Instead reference “previously stated” facts or arguments
- You are allowed to hold materials such as a computer or paper for reference, but try not to read off of them
- You are allowed to pass notes to your co-counsel to prepare, but be as discreet as possible
- When asked questions, you are allowed to divert the question until later, have your partner tag in, or just say you don’t know. Be respectful and try to answer the questions to the best of your knowledge, however, as it does count towards scoring.
- When you’ve completed your argument, make sure to yield the remainder of your time to the court.

# Case of the Shipwrecked Sailors

Three sailors on an oceangoing freighter were cast adrift in a life raft after their ship sank during a storm in the Atlantic Ocean. The ship went down so suddenly that there was no time to send out an SOS. As far as the three sailors knew, they were the only survivors. They had no food or water in the raft. And they had no fishing gear or other equipment that might be used to get food from the ocean.

After recovering from the shock of the shipwreck, the three sailors began to discuss their situation. Dudley, the ship's navigator, figured that they were at least one thousand miles from land and that the storm had blown them far from where any ships would normally pass. Stephens, the ship's doctor, indicated that without food they could not live longer than 30 days. The only nourishment they could expect was from any rain that might fall from time to time. He noted, however, that if one of the three died before the others, the other two could live a while longer by eating the body of the third.

On the twenty-fifth day, the third sailor, Brooks, who by this time was extremely weak, suggested that they all draw lots and that the loser be killed and eaten by the other two. Both Dudley and Stephens agreed. The next day, lots were drawn and Brooks lost. At this point, Brooks objected and refused to consent. However, Dudley and Stephens decided that Brooks would die soon anyway, so they might as well get it over with. After thus agreeing, they killed and ate Brooks.

Five days later, Dudley and Stephens were rescued by a passing ship and brought to port. They explained to authorities what had happened to Brooks. After recovering from their ordeal, the two were placed on trial for murder.

The country in which they were tried had the following law: Any person who deliberately takes the life of another is guilty of murder.

# Court of Appeals Rubric

*Overall (Circle a number)*

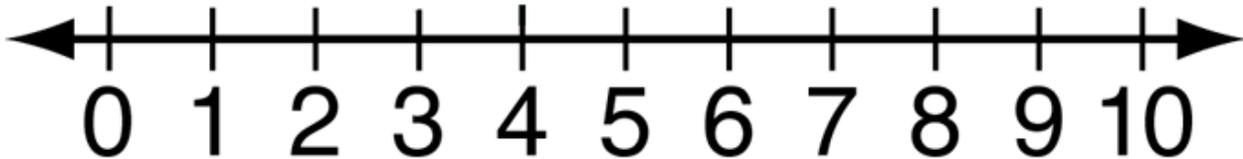
Not Effective

Fair

Good

Excellent

Outstanding



<b>Criterion</b>	<b>Score (1-10)</b>
Logic/Coherence of Argument	
Use of Case Law	
Professionalism/Courtroom Etiquette	
Presentation/Public Speaking	
Use of Arguing Time <ul style="list-style-type: none"><li>• Each partner must speak for at least 3 minutes.</li><li>• It is recommended that the full 10 minutes be used.</li></ul>	