

# ORAL ADVOCACY AND BRIEF WRITING: AN ATTORNEY'S PERSPECTIVE

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# AGENDA

- ▶ *Shaping the Appeal*
- ▶ *Tips on Effective Brief Writing*
- ▶ *Oral Argument: the Good, the Bad, the Ugly*

# SHAPING THE APPEAL

- ▶ *Appellate Advocacy Starts Before the Appeal*
  - ▶ *Preserving Issues for Appeal*
  - ▶ *Shaping the Factual Record*
  - ▶ *Shaping the Issues on Appeal*

# BRIEF WRITING DO'S AND DON'TS

## ▶ DO:

- 1) *Select your issues carefully*
- 2) *Frame a clear affirmative theme*
- 3) *Invest in the Statement of Facts*
- 4) *Faithfully describe the law*
- 5) *Tell the Court why your position is “Good for America”*
- 6) *Write for a busy generalist judge*
- 7) *Master persuasive writing*
- 8) *Edit, edit, edit (and then edit some more)*

# BRIEF WRITING DO'S AND DON'TS

## ▶ DON'T:

- 1) *Cherry pick helpful language from unhelpful cases (the “Gorsuch rule”)*
- 2) *Substitute rhetoric for reasoning (the “Frederick rule”)*
- 3) *Brush weaknesses under the rug*
- 4) *Overuse footnotes*
- 5) *Misrepresent the facts or the law*

# FOCUSING THE ORAL ARGUMENT

FACTS

OPENING

CLOSING

UNIFYING THEME

SUCCINCT ANSWERS

# ORAL ARGUMENT: THE GOOD, THE BAD, THE UGLY



# HELPFUL RESOURCES

- ▶ David C. Frederick, *Supreme Court and Appellate Advocacy*
- ▶ Tessa Dysart & Leslie Southwick, *Winning on Appeal*
- ▶ Antonin Scalia & Bryan Garner, *Making Your Case: The Art of Persuading Judges*
- ▶ William Strunk & E. B. White, *The Elements of Style*
- ▶ Bryan A. Garner, *Dictionary of Legal Usage*