



Top Appellate Tips

Judge Sueanna Johnson
Colorado Court of Appeals

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Agenda

1. Jurisdiction of the Court of Appeals and the Colorado Supreme Court
2. Standards of Review
3. Educate Your Panel (Briefing / Oral Argument)
4. Brief Writing Tips
5. Oral Argument

Jurisdiction of the Court of Appeals and the Colorado Supreme Court

- **Jurisdictional Screening at the Court of Appeals:**
In particular, show cause orders from the Motions/Jurisdiction Attorneys.
- **Final Appealable Orders and C.R.C.P. 54(b)**

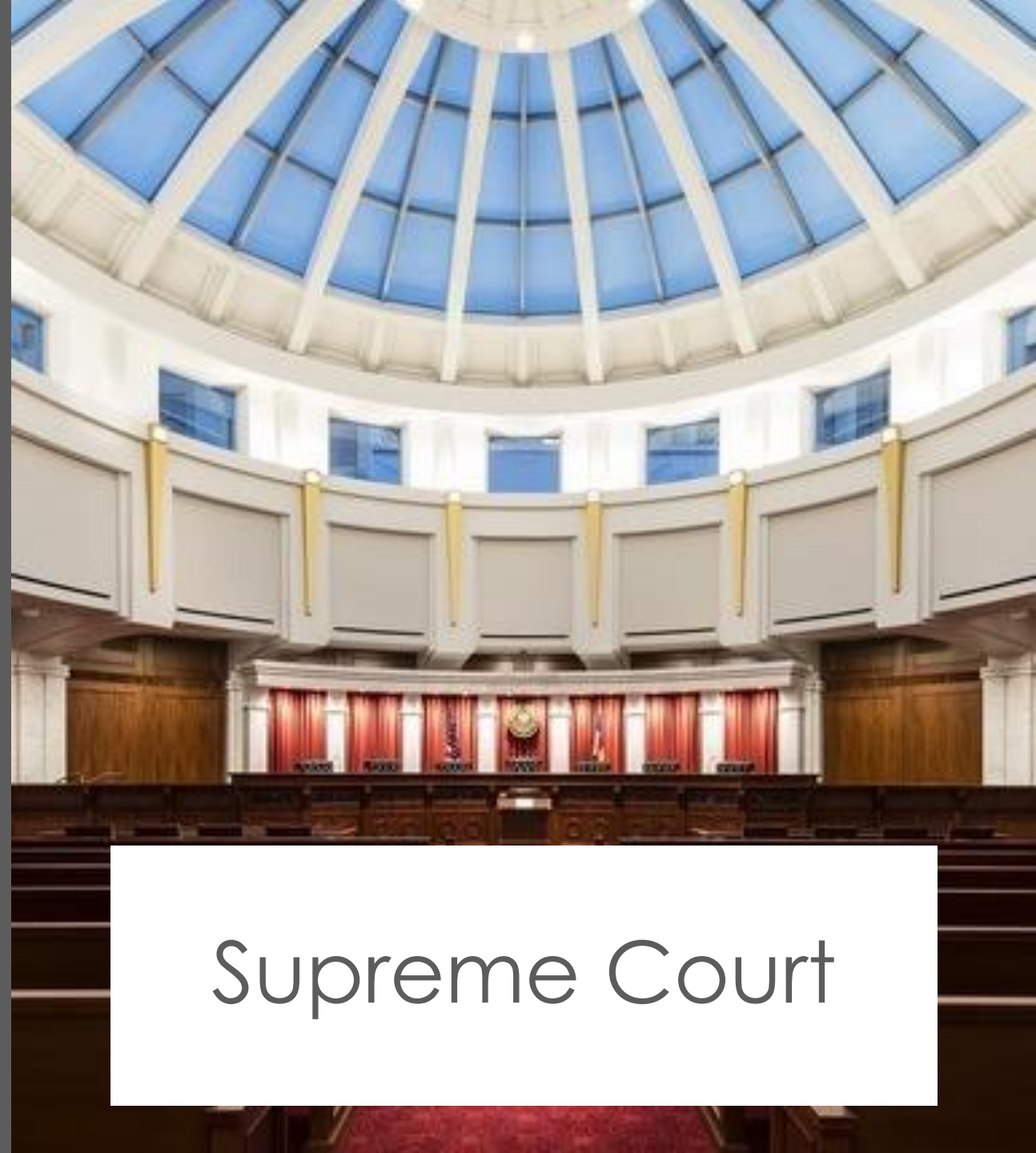


Court of Appeals

Examples of Other Appeals

- **Interlocutory Appeals:** C.A.R 4.1; C.R.C.P. 23(f).
- **Rulings Collateral to the Judgment:** costs and attorney fees.
- Probate.
- **Administrative Review:** Determine if the case goes to the district court or the court of appeals. Remands by final agency decision-makers.
- **Dependency and Neglect:** adjudicatory (includes parenting plan) and termination of parental rights.

- **As-of-Right Appeals:** Limited to specific cases (e.g., PUC and water-rights cases)
- Review on **Certiorari**
- Review under **C.A.R. 21**
- **Statistics:** Number of cases reviewed each year compared to cases filed each year (both on certiorari and Rule 21)



Supreme Court

Standards of Review

The Importance of Standards of Review

Appellate courts assess *whether an error occurred based on the relevant standard of review*, not whether lower court rulings were “right” or “wrong.”

Understand how the standard of review affects each issue on appeal and identify how that standard can be overcome (or not).

The Importance of Preservation

The basic rule is, *if an issue was not preserved, the appellate court won't review it.*

There are exceptions, but forfeiture and waiver, as well as invited error, are very hard to overcome on appeal.

Particular Standards of Review

- Sufficiency of the Evidence
- Clear Error
- Abuse of Discretion
- De Novo
- Harmless Error
- Constitutional Law
- Administrative Law
- Miscellaneous: Various substantive areas of law may have specialized standards of review (e.g., dependency and neglect; mental health expedited appeals, etc.).

Educate Your Panel
(Briefing / Oral Argument)

- **Know your audience.**
- Avoid words like “clear” and “simply.” Just make your arguments clear and straightforward.
- Explain **why the resolution matters**: Discuss the legal, policy, or stakeholder implications of the issue.
- Don’t force the Court to **“reverse engineer”** your case.

Brief Writing Tips

Framing the Issues

- **Define your issues** clearly.
- Beware of the principle of party presentation.
- Narrow your issues.
- Group similar issues together.
- Consider a **brief introduction**.

Statement of Facts

- **Be concise:** Focus on facts relevant to the issues. Avoid summarizing the entire procedural history.
- Avoid excessively listing the dates of relevant events. Dates can be confusing and dense; the **general sequence of events** is more important.
- Avoid too much **argument in the facts section.**

Summary of the Argument

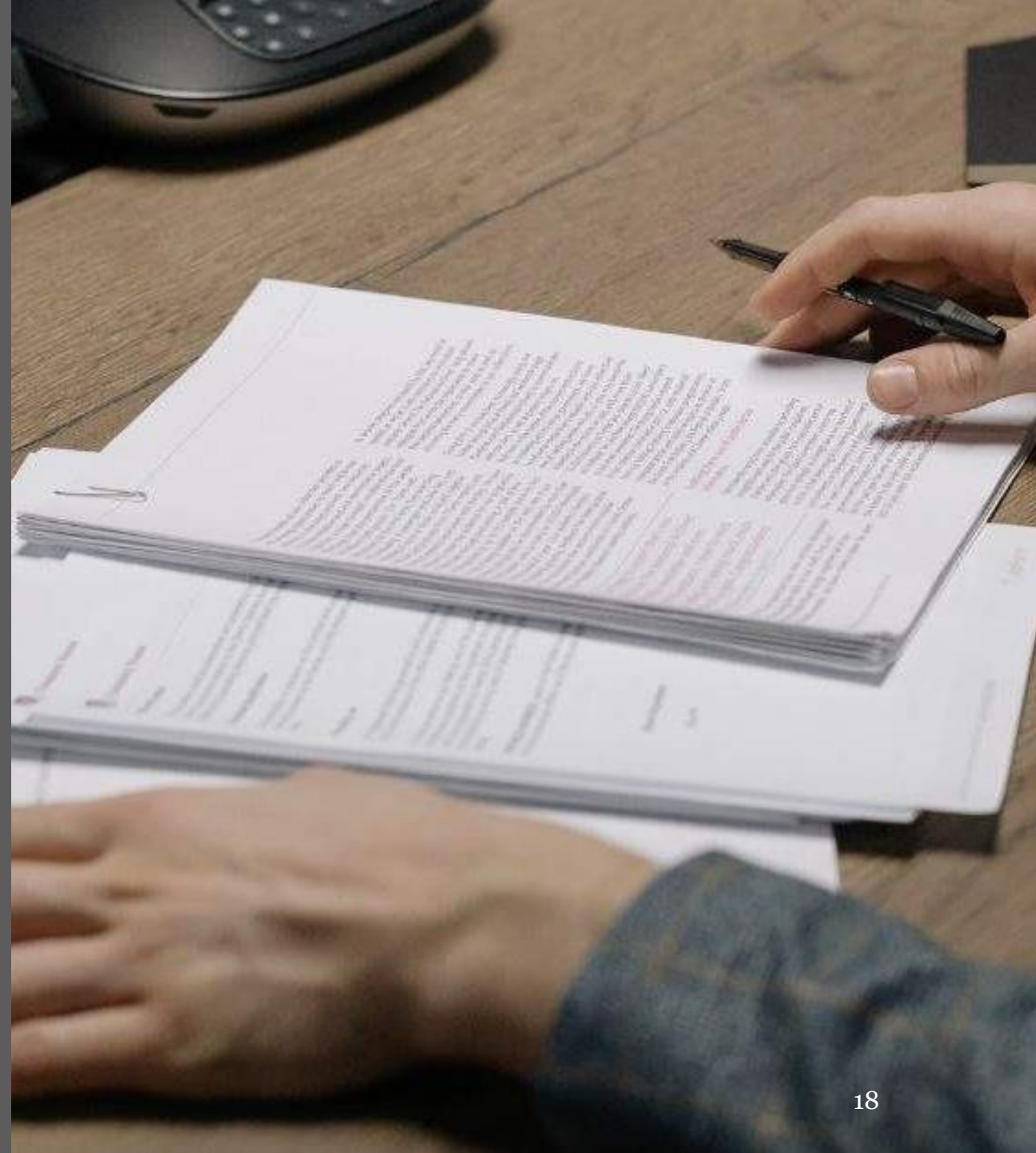
Use this section wisely to **outline the main points** of your argument ***without all the supporting details.***

Argument

- Make it as simple as possible without oversimplifying.
- Don't dump, synthesize.
- Address contrary authority. Do not ignore it.
- Highlight key authorities.
- Be precise about the record.

Answer Brief

- **Avoid tit-for-tat:** Focus on why you win.
- Address the other party's best legal authorities and facts.
- **Clarify confusing briefs:** strive to clarify the case and issues for the court.



Effective Use of Reply Briefs

- Do not repeat the opening brief.
- Address difficult arguments head-on.
- Decide when to rest on the opening brief.

Oral Argument

Overview

- Timeline for Oral Argument: request, review, practice, deliver
- Client Considerations
- Court Environment / Judges / Justices

How to Prepare

- Know the record and the key authorities cold.
- Hold a moot court if possible.
- Identify your three hardest questions.
- Prepare a brief introduction.
- Think through policy implications and collateral consequences.



At the Argument

- Maintain a reasonable cadence.
- Avoid saying you were not the trial attorney when asked about the record.
- Answer the question.
- Concede when appropriate.



Hybrid Oral Arguments

- Court of Appeals Policy
- Test Wi-Fi / other technology
- Have a backup plan
- Test lighting / background