Advocacy: A View From the Bench - - What Works and What Doesn't

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Effective written and oral advocacy is the job of the appellate litigator. Yet, Michigan's appellate jurists and court staff confide that the arguments they read and hear often are not effective. Effective arguments, they say, would ***help*** the court - - to perceive the critical issues, understand the pertinent facts, appreciate the legal significance of particular facts, and determine whether and why the cited authorities or reasons derived from them compel a result in favor of the arguing party.

Numerous books, articles, and seminars offer consistent advice about and, frequently, examples of effective appellate writing and speaking. The materials in this section of the Handbook and the discussion in our April 29, 2004 plenary session agree with these teachings. They go a step further, however, to reveal some particular advocacy preferences of the court staff and jurists who process and decide appeals in Michigan.

The first document in this section, the Fall 2001 article, "Advocacy in Intermediate State Appellate and Supreme Courts," reprinted with the permission of the Defense Research Institute, is an overview with specific recommendations by the Hon. Robert P. Young, Jr., a Michigan Supreme Court Justice who formerly served on the Michigan Court of Appeals. Justice Young, who holds firm opinions about how appellate lawyers can help appellate decision-makers, also is one of our discussion participants.

The second set of documents consists of responses by 118 members of Michigan's appellate judiciary and court staff to a survey of their appellate advocacy preferences. The survey asked 91 questions: 71 about briefs, 20 about oral arguments; 89 were "agree/disagree" questions, two were open-ended. The survey was submitted earlier this year to Supreme Court Justices, Court of Appeals Judges, Supreme Court Commissioners, Court of Appeals

Commissioners, Law Clerks from both courts, and Court of Appeals Research Attorneys. Their anonymous responses are documented as six reports and two appendices: Complete Survey Results (118 respondents); Justices' Survey Results (5 respondents); Judges' Survey Results (19 respondents); Commissioners' Survey Results (26 respondents); Law Clerks' Survey Results (36 respondents); "Other" Survey Results (32 respondents); Appendix A (brief writing); and Appendix B (oral argument). The Michigan Appellate Bench Bar Committee Foundation is profoundly grateful to Court of Appeals Chief Clerk Sandra Schultz Mengel and Information Systems Director Denise Devine, without whose administrative and technical assistance the survey could not have been conducted or the reports produced.

Through the Handbook materials and our plenary session discussion, we hope to answer the Bar's questions about Michigan appellate advocacy as authoritatively as possible and, ideally, to promote written and oral advocacy that helps our appellate courts better perform their roles.

Advocacy in Intermediate State Appellate and Supreme Courts*

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Advocacy in Intermediate State Appellate and Supreme Courts

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I. Introduction.

The premise of this paper is that there are differences between the role of state intermediate appellate and supreme courts and that those differences require discrete advocacy tactics. Having sat on and argued in Michigan's Court of Appeals and Supreme Court, I readily concede the premise—to a point. While there may be some tactical differences in advocacy that must be practiced in these two levels of court, it is my belief that there are more shared characteristics than differences.

There is a fundamental distinction between an intermediate appellate court and a court of last resort: the latter is presumably free to reconsider the wisdom of its precedents (and those created by lower courts) and to change them, whereas an intermediate appellate court is theoretically bound by and must apply existing precedents. In reality, for advocacy purposes, the distinction may be less significant than might be imagined because appellate courts (whether with or without authority) frequently modify precedents and supreme courts are frequently reluctant radically to overthrow their own precedents. Thus, while the ability to alter precedent is believed to be the unique province of supreme courts, expansion and alteration of precedent occurs at both the intermediate appellate and supreme court levels.

As a consequence, I will focus in this paper on the characteristics of good appellate advocacy in general, noting advocacy issues that may be unique to each level of court.

II. Some Important Threshold Appellate Advocacy Issues

A. It All Begins with Mastery of the Record and Appellate Procedure

For the inexperienced, there are two common pitfalls of appellate advocacy: (1) inadequate investigation and master of the lower court record; and (2) failure to adhere to rules of appellate procedure.

As so many appellate advocates understand, for good of ill, trial counsel create the record with which appellate practitioners and the appellate courts must work. Appellate rules and principles are driven by the same concern: that error committed at the trial level be identified immediately for the trial judge so that corrective action can be undertaken *during* the trial. This core principle conserves judicial resources and fosters the quest for justice by promoting curative judicial action when it can most likely make a difference in the outcome of a case. If the proper record has not been made at trial, it is unlikely that the damage can easily be repaired in the appellate courts.

Most sophisticated appellate advocates examine the lower court record carefully to determine whether it supports a viable basis for appeal.

In my experience, intermediate appellate courts usually detect the most significant problems created by an inadequate lower court record. At the supreme court level, "record issues" tend to be of the more subtle variety that get teased out after the legal issues have been successively refined by proceedings in the lower courts. This process of "issue refinement" is one of the primary reasons that an appellate advocate contemplating an appeal to a state supreme court should revisit not only legal issues, but the record itself. (*See* Tips for Effective Written Advocacy at the Petition Stage, *infra.*)

Complete technical mastery of the appellate court rules is required for success in appellate practice. There is simply no excuse for an appellate advocate failing to know when a document must be filed or what the appellate record filed must contain. These requirements are usually spelled out in excruciating detail in each " jurisdiction's appellate rules of procedure. However, although failure to adhere to the appellate rules is frequently the basis for unhappy results, the fact is, no matter how well a practitioner technically complies with the appellate court rules, the merits of an appeal lie in the ground work accomplished (or not accomplished) by an attorney during trial.

The consequences of inept mastery of appellate rules of procedure (and the law itself) are usually meted out by intermediate appellate courts. However, even in a case that might be of interest to the court, the inadequacies of appellate counsel can have a bearing on a supreme court's willingness to grant an appeal petition when it appears that counsel will be of limited assistance in sorting through complex legal questions.

B. Preservation of Issues for Appellate Review

Preservation questions are related to mastery of the lower court record but warrant separate comment. Generally speaking, an appellate court will not consider an issue that was not "preserved" in the lower court. The rules for preserving issues vary from jurisdiction to jurisdiction. However, with certain notable exceptions, such as constitutional issues and jurisdictional defects, failure to preserve the issue usually results in waiver or forfeiture of the issue. See, e.g., *United States v. Olano*, 507 U.S. 725, 732-34; 113 S. Ct. 1770; 123 L. Ed. 2d 508 (1993); *United States v. Young*, 470 U.S. 1, 15; 105 S. Ct. 1038; 84 L. Ed. 2d 1 (1985). Thus, one of the first questions an appellate advocate must address is whether the issue being appealed has been properly preserved. Make certain that your arguments, as well as those of your opponent, have been preserved.

Again, while issue preservation defects are usually detected at the intermediate appellate level, the issue refinement process noted above sometimes exposes for the first time at the supreme court petition stage a preservation issue not previously detected or originally seen as relevant at the lower court levels.)

C. Standards of Review

Whether one is seeking review in an intermediate appellate or supreme court, one of the primary issues to be identified and resolved is what standard of review should be applied to any claimed error. There are three common standards of review (clear error, de novo, and abuse of discretion) that an appellate court employs when evaluating decisions of lower courts. Misapplication of a standard of review is a common snare for courts and counsel alike. It is imperative that the advocate know, identify, and apply the standard of review that is appropriate for each kind of alleged error.

III. General Issues of Effective Appellate Advocacy

A. Preliminary Considerations

1. Mandatory versus discretionary jurisdiction

Most intermediate appellate courts have mandatory jurisdiction, meaning that the court has little or no discretion in hearing an appeal. In contrast, most courts of last resort have, at

least to some extent, discretionary jurisdiction. (The supreme courts of Nevada and North Dakota have no discretionary jurisdiction, while those of West Virginia and Wisconsin have no mandatory jurisdiction. Most jurisdictions fall somewhere in between. See National Center for State Courts, State Court Structure Charts, http://www.ncsc.dni.us/divisions/research/csp/cspcaseload.html, 1999.)

In appellate courts possessing discretionary jurisdiction, a practitioner must convince the court that his or her case merits the court's attention.

Typically, an intermediate state appellate court is generally the "error correcting" court. A state supreme court, on the other hand, usually is not the place to seek mere error correction. (For example, in Michigan, an appellant is required to demonstrate in its petition to our supreme court why a claimed error merits review; an appellant must show that the error will cause "material injustice:" Michigan Court Rule 7.302(B)(5)). *A court of last resort is typically far more concerned with managing the "fabric of the law" than the outcome of a particular case.*

In asking any appellate court of discretionary jurisdiction for relief, a practitioner should be able to articulate how his or her case will affect the "big picture." Especially when approaching a court of last resort having discretionary jurisdiction, a practitioner must keep one overarching principle in mind: *jurisprudential significance*. Simply put, the question you must answer at the appeal petition stage is why your case is sufficiently significant to "the big picture" in some area of the law that it deserves the intervention of the supreme court.

2. Know your audience

I am surprised by the number of appellate practitioners who believe that their pleadings are reviewed only by the appellate judges and their law clerks. The fact is, in most appellate courts and probably all state supreme courts, pleadings are reviewed by many diverse individuals employed by the court. Knowing the identity of your appellate judges and justices (and their judicial philosophies and positions on specific areas of the law) is essential in preparing an appeal petition, for preparing briefs, and in preparation for oral argument. While the legal positions of appellate judges and justices on specific questions are probably matters of public record, advocates need to be aware that appellate papers are generally reviewed by several different groups of people besides the jurists themselves. In order to be an effective advocate, the practitioner needs to understand and be able effectively to communicate with the "target court audience: Few trial practitioners would dream of attempting to address a trial judge or a jury without first attempting to learn something about either. The same principles hold true for appellate courts.

a. Who is checking out your briefs?

"Audiences" in most appellate courts of all levels include, but are not limited to:

a) Court clerks, who typically review appeals and motions for technical compliance with the applicable appellate rules of procedure;

b) Lawyers on the permanent staff of the court (staff research attorneys or court commissioners), who may review the petitions for appeal, appellate briefs, other filed papers and the trial record for substantive legal issues and make recommendations to the court concerning the merits of such pleadings; and

c) The judges or justices (and their respective law clerks) who will ultimately decide your motion or appeal.

The experience of each of the individuals who process your appellate materials varies markedly. A court staff attorney may be a new law school graduate, or she may have many years of experience in practice and with the court and specialize in sophisticated and highly technical areas of the law. Equally obvious, judges and justices vary in their length of experience on the court and the breadth of their practice before joining the court.

In drafting their written pleadings, advocates would do well to remember that no jurist can be an expert in every field of law and that staff attorneys and law clerks may have no "real world" experience in the law.

The fact that many different persons with varying levels of experience are involved in reviewing appellate papers requires that an appellate practitioner make all written submissions easy to read and comprehensible. (See Tips on Written Advocacy, infra.)

3. Precedential shackles

As noted above, the most significant difference between an intermediate appellate court and a court of it. last resort is that the intermediate appellate court is compelled to follow case precedent.

a. Intermediate appellate courts

If prior precedents compel a result contrary to a desired outcome, what tactics can a practitioner employ before an intermediate appellate court?

- As a general rule, the intermediate appellate court is required to simply apply the facts of the case to current law. In reality, a particular precedent rarely is precisely on "all fours" and requires some form of extrapolation in order to apply it to another factual pattern. The necessity of having to extrapolate provides an advocate with an opportunity to argue to an intermediate appellate court how the existing precedent can be favorably "adapted" to fit the new factual pattern of the case at hand. Alternatively, where the circumstances giving rise to the precedent appear especially attenuated, an attempt to distinguish your case, both factually and legally, may be in order to make the argument that the prior cases are not applicable to your case.
- Sometimes statutory enactments becoming effective after the precedential case was decided will undermine the validity of that case. This can be an especially powerful argument for avoiding adverse precedent.

b. Courts of last resort

In contrast, a court of last resort usually has the authority to reconsider and possibly overturn prior precedent. In an appropriate case, a practitioner should not hesitate to ask a court of last resort to reconsider its past decisions.

4. Getting a foot in the door: an examination of "jurisprudential significance"

As suggested, most state supreme courts having discretionary jurisdiction are interested primarily in those cases that present jurisprudentially significant issues. In many jurisdictions, the grounds upon which a discretionary appeal may be had in the court of last resort are prescribed by rule or statute. For example, Michigan Supreme Court rules provide, in part, the following grounds for appeal:

> c) The issue involves a substantial question as to the validity of a legislative act;
>
> d) The issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;
>
> e) The issue involves legal principles of major significance to the state's jurisprudence;
>
> f) In an appeal before decision by the Court of Appeals, delay in final adjudication is likely to cause substantial harm;
>
> g) In an appeal from a decision of the Court of appeals, the decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals. . . .

Michigan Court Rule 7.302(B). Clearly, this rule focuses primarily upon jurisprudentially important matters—a statute that may be of dubious constitutionality, actions by or against the state or its officers and subdivisions, and cases that may implicate important legal doctrines of the state.

While the rule also encompasses appeals concerning "only" error, the rule makes it clear that the nature of the error must be one of consequence. In short, the first order of business is to decide whether your case even presents a credible argument for serious discretionary consideration by the court. Such a rule provides at least one clear template against which a practitioner considering an appeal can measure his or her case. Be sure to check to determine if your state jurisdiction has such a rule.

5. What about the case that is not jurisprudentially significant?

While some kinds of cases fall naturally into the "big case" category that might invariably interest a state supreme court, many frankly involve only a claimed error of a lower court. Is there any prospect for relief in such cases?

Many advocates fail to recognize the ability of a supreme court to provide relief without granting certiorari. A court of last resort can often resolve an issue short of full briefing and argument. Where appropriate (and perhaps in the alternative), do not be afraid to seek "lesser" forms of relief, such as a remand to a lower court for clarification of a controlling issue, a remand in light of more recent supreme court authority, a peremptory order or similar relief Even when no jurisprudentially significant issue is present, when the claimed error is clear, rather than granting leave, there may be more willingness by a court of last resort to take peremptory action.

6. Jurisprudential significance: an insider's view

To be frank, the default position in appellate practice before courts of last resort is denial of a petition for review. Given the huge expense and massive effort required to mount a state supreme court appeal, an appeal presenting any doubt as to its appropriateness for plenary review is a likely candidate for denial. Dismissing a case on the basis of "leave improvidently granted" represents a costly mistake for the court and all parties concerned.

Only a tiny fraction of discretionary appeals are granted by state supreme courts of any stripe. Thus, even with an explicit rule of appellate procedure identifying cases that qualify for discretionary consideration by the Michigan Supreme Court, views among its justices frequently diverge on whether a particular case meets the criteria and, even if it does, whether the case is sufficiently important that it should be considered in plenary fashion at that point.

Moreover, many state supreme courts, even those with broad discretionary review jurisdiction, are required to consider some kinds of cases and give them docket preference. Jurisdictions with the death penalty, for example, must give those cases priority attention. Such priority appeals necessarily displace cases of other types and require that nonpriority cases demonstrate a correspondingly higher compelling need for supreme court review.

a. Collateral impediments

Even when a case indisputably implicates a jurisprudentially significant issue, there is no certainty that leave to appeal will be granted by a supreme court. Not infrequently in my court, a case of initial interest is eventually rejected due to any number of simple prudential considerations:

- On closer inspection, the record looks muddled or insufficiently developed on the critical question of interest.
- Another issue in the case appears dispositive.
- Appellate counsel is known to be weak and unlikely to be able to assist the court deal effectively with the legal question posed.
- The issue is one that the lower courts might profitably develop before our court needs to act.
- The controlling lower court precedent is arguably correct and the need to add the supreme court's imprimatur is unclear.

Michigan, like some other jurisdictions, allows our court of appeals to issue "published" and "unpublished" decisions. Only the former have the force of binding precedent until overturned by the supreme court. Consequently, one of the key considerations in our court's grant review process is whether the decision being appealed was published or unpublished. An unpublished case requires a much more compelling argument to make the grant cut.

Many similar such considerations beyond jurisprudential significance enter into the calculus as to whether a particular case is "grant-worthy."

The point is, beyond considering whether his or her case has jurisprudential significance, appellate counsel should also assess whether the case involves any of the kinds of collateral "problems" listed illustratively above. Few cases are without blemishes. However, in discretionary appeals, given that few cases are so compelling that a state supreme court must

review them, jurisprudentially "interesting" cases that present significant problems will undoubtedly end up in the "denied" pile.

b. What are you really asking the supreme court to do?

My experience on the bench persuades me that a healthy percentage of appellate practitioners have not sufficiently reckoned with the basic question of what they want the supreme court to do.

These advocates know they want a better result, but frequently are vague in framing the precise nature of relief sought and are even less clear on the "mechanics" of how the court is authorized to (and actually should) deliver that relief.

One of the most important aspects of excellent advocacy in a court of last resort is to state clearly what relief is being sought and to provide the analytical "roadmap" that shows the court how it can best reach that result. Failure to provide clarity in this respect will undoubtedly impede success in gaining favorable petition review in a supreme court.

c. Are you asking the court to do something easy or difficult?

The philosophy of a court and its justices matter. Clearly, judicial traditionalists view some issues differently from their more judicially activist colleagues. Whatever the judicial philosophical complexion of a particular state supreme court, as a body they remain fundamentally conservative institutions committed to stare decisis. Generally speaking, it is probably easier to persuade a state supreme court incrementally to change existing precedent than to alter it radically or overturn it. An appellate advocate should seriously question whether; in order to prevai4 precedent must be overturned or merely "tweaked." The more radical the action you are asking the court to undertake regarding precedent, the more compelling must be the argument for unsettling the established order.

d. Has your supreme court demonstrated any trends in its certiori process?

In Michigan, each application for leave to appeal is acted upon by order. Even in cases in which leave is denied by a "run-of-the-mill" order, one or more justices may issue a statement indicating his or her views on the grant-worthy character of the matter or a particular issue implicated by the case. This body of orders (whether leave is granted or denied) provides one of the best barometers of the kinds of cases my court currently thinks are grant-worthy.

A review of your state supreme courts recent "certiori orders" could similarly provide invaluable clues about how your own petition should be framed to capture the attention of the requisite number of justices to achieve a grant. They may also show how willing your supreme court is to tackle stare decisis issues. (It is also useful to know how many justices are required to vote in favor of granting leave to appeal)

e. What kinds of other circumstances get the attention of justices?

In my experience, all other things being equal, cases more likely to garner action by a state supreme court typically involve those in which an area of law has become demonstrably uncertain, troubled, or difficult evenly to apply. The following examples are illustrative:

- Cases involving "rogue" intermediate appellate court decisions—decisions that are jurisprudentially binding but appear to conflict with existing supreme court precedent, state or federal constitutions, or a statute
- Cases that expose conflicting resolutions of legal issues among different appellate court panels
- Cases that involve issues of first impression
- Cases that involve the interpretation of new legislation or a new state constitutional provision
- Intermediate appellate court decisions that contract or expand the common law or the state or federal constitutions.
- Cases in which a state statute has been declared unconstitutional.
- Cases involving areas of the law in which the court's own precedent has been in conflict or equivocal.
- Cases in areas of the law in which lower courts have had difficulty consistently applying precedent.
- Developments in an area of common law in other jurisdictions that have called into question the wisdom of the existing controlling precedent.

IV. Tips for Effective Written Advocacy

A. Make Your Written Arguments Accessible

A few basic, common sense suggestions emerge concerning written appellate advocacy: make your written arguments accessible.

"Accessible" includes readable. Avoid odd, small, and difficult-to-read fonts and consider bindings that make the pleading easy to manage while being read. Clarity, sound organization, and conciseness are virtues; sloppy, prolix and obscure argumentation, if not advocacy sins, hurt your cause.

1. At the petition stage

Although most of the points made below concerning postpetition brief writing are equally relevant to petition drafting, the following points warrant special attention at the appeal application stage.

The application petition is your only shot at capturing the courts attention and persuading it that your case deserves plenary review.

In relation to the number of cases a state supreme court decides on their merits, the volume of appeal applications is very large. Here, an excellently written petition can enhance the prospect of obtaining a second look by a busy court. Your petition should not be one that gets shorter shrift simply because it is hard to read or understand.

a. Rethink everything

As suggested above, it is common that successive reviews in lower courts result in some issues—earlier thought vital—receding in importance and other issues emerging as central. (This is why trial judges frequently r complain that they tried a case different from the appellate courts decided.)

Whatever written arguments you filed in the lower courts—even ones on which you succeeded—with your petition, start fresh and reconsider the issues that you believe to be the most compelling ones for review by the supreme court. By all means, omit, or at least deemphasize, makeweight arguments.

b. Be aware of how you frame your issues ?

If you are seriously considering an appeal to a state supreme court, your case may (and probably should) have broader legal implications beyond the issues as they were initially framed in the lower courts.

Not infrequently, the parties to an appeal become so engrossed in their arguments—particularly as originally framed in the trial court—that they fail to recognize that they are asking the supreme court to decide the case in ways that will disrupt settled legal principles in other areas such as agency, contract, or tort law.

An advocates failure to recognize how his or her arguments may affect closely related areas of law can work against a successful outcome—particularly, if there is an alternative supportive rationale that is less disruptive to the fabric of law.

c. Get to the point quickly

Tell the court why your case satisfies established grounds for plenary supreme court review. Emphasize why your case is important in some way to the state's jurisprudence and why your case offers a sound vehicle to address that jurisprudential issue.

d. Tell the court precisely what kind relief you seek and identify the source of the court's authority to grant it

e. Describe the alternative rule to be adopted

If you are asking the court to abandon or alter existing precedent, in addition to explaining why this is necessary, describe with specificity the alternative rule you believe the court should adopt. Never assume that the court will be able, unaided by you, to intuit the "appropriate" alternative rule to its existing precedent.

f. Assume that you are addressing generalists in the law

If your case involves a highly technical area of law or substantive matter, do not assume that anyone on the court will necessarily have the expertise to understand the general area. (This is equally true of complex statutory codes—even codes that the court has repeatedly addressed.) Provide a glossary of terms and make sure that you provide an adequate "roadmap" through the technical materials to assist your generalist petition readers.

g. Consider in advance the obstacles you face that must be overcome in order to succeed

Are there "half loaf" outcomes that might be preferable to a flat denial? For example, if a case is governed by a binding adverse, but poorly reasoned prior lower court decision, an advocate might consider requesting the supreme court panel to remand for clarification of the principles involved or for a peremptory order of reversal.

h. Have a lawyer unfamiliar with your case review your petition for clarity and persuasiveness

An independent review of your petition might reveal holes in your argument and the logical flow of your arguments.

2. At the postpetition stage

Once leave is granted, your written argument is the only place you will have the opportunity to state your case in complete fashion to the court.

Remembering that your brief may be first read by a new law graduate and later by other court personnel—all laboring under significant time pressures—it makes sense to ensure that your arguments are readable and flow logically and seem consistent with common sense.

a) Prepare an effective table of contents. This will help the reader follow the logic of your arguments.

b) Create easy to follow "road maps" for your readers. If you have a complex fact pattern, lay it out as carefully and simply as possible; make the procedural history clear; and outline the relevant case law, applicable statutes and other authority so that the core legal issues are clearly and easily identified.

c) Provide a context for your case. Most of all, because your case is only a dry record to the persons reading it on the court, try to place your case in a comprehensible factual and legal context.

d) If permitted, use "jump cites"—references to the specific page in the case where the proposition you are relying on can be found. Cite specific pages of the record that support your argument. Never make the court search for the law or record support for your position.

Note: As in the case of petition writing, my impression is that too few appellate lawyers spend enough time redrafting their briefs to distill their arguments. I strongly suggest that advocates let another lawyer unfamiliar with the case read the brief before it is filed as a means of testing whether the arguments are persuasive and that they flow and comport with common and legal sense.

B. Use Priority and Proportion: Organize and Argue Your Issues According to Their Merit

1. Use a rifle, not a shotgun

One of the great common failures of appellate advocacy is the use of a "shotgun" approach wherein a large number of arguments are offered up for consideration with no

indication of their relative merits. If the advocate cannot decide which is the better argument, it is a good bet that the court will be in no better position to judge.

2. Prioritize your arguments

Not every argument is a winner: An advocate should raise any appellate issue he or she feels is necessary, but the best advocates focus their argument on outcome determinative issues. A flurry of trivial or silly arguments can, and often do, overshadow stronger arguments.

3. Make your arguments concise Brevity is an asset

There is no rule requiring that the full briefing page allocation actually be used when writing appellate briefs.

C. Understand and State What You Are Asking the Court to Do

1. Remember and pay attention to the big picture

Jurists are concerned about whether and how a particular case is governed by prior precedent and how its decision in a case before it may affect the structure of the law. We appreciate advocates who attempt to help us to see a little farther over the horizon—to understand the implications of our decisions as they may affect future cases of the same or similar class.

2. State the relief you are seeking in a straightforward fashion

If an advocate actually intends to urge that a court of last resort make a fundamental change in the existing law, then the argument should be made explicitly and with the appropriate legal support and rationale.

D. Maximize Your Credibility: Be Honest with the Court

1. Don't lie or intentionally mislead the court

While seemingly obvious, this is a core ethical requirement of lawyers that is breached all too frequently. Whatever the merits of the argument being made, there are few things that are more destructive of success than having a court decide that an advocate is intentionally trying to be deceptive. Whether the cause for this belief is the citation of authorities that do not stand for the proposition asserted, failure to raise relevant, but adverse authority, or frank misrepresentations of the record, there simply is no excuse for failing to check and recheck the representations an advocate makes to the court.

2. The court will catch you anyway n

Unlike many overburdened state trial courts, supreme courts typically have the resources to check both the cases and the record. Because the record and the authorities cited will be checked, advocates should be sure that citation to the record and the characterization of relevant authority is accurate. If there is adverse authority for the proposition you wish the appellate court to adopt, acknowledge it and explain how the court should deal with this problem.

3. Use a professional tone

Finally, credibility is frequently lost or gained by the tone with which arguments are made. Whining, whether written or oral, is seldom well received. Avoid shrill attacks on your adversary, the lower courts or anyone else. Typically, if a real outrage has been committed, the principle of res ipsa loquitur applies. Identify the location of the carnage and its consequences, but do not harp on the venality of the author of the atrocity.

V. Tips on Effective Oral Advocacy

Effective oral argument really can provide the margin of success in close cases. Unfortunately, one of the great lost advocacy opportunities is the typical appellate oral argument which is approached by too many attorneys as a ritual to be endured rather than an opportunity to persuade. A good oral argument has an inexorable focus on the critical issues and supplies the most compelling reasons why those issues should be resolved favorably to the advocates position.

A. Remember That You Are Addressing Judges, Not a Jury

At the time of argument, the justices undoubtedly will have read your briefs. While passionate advocacy can be effective, histrionics directed to the justices usually is not.

B. Preparation Is Vital—Be Over prepared.

1. Know your record cold as well as the relevant law and the appropriate standards of review

a) Have case citations and crucial record references handy during argument.

b) Nothing is as deflating as having to admit during argument ignorance of key facts, trial court rulings, or controlling authority: ("I wasn't the trial attorney" is always an unsatisfactory response to a question from a justice.)

c) Consider practicing your argument in a moot court exercise. It appears that many advocates are surprised by and unable to respond to issues raised at oral argument because they have not given sufficient thought to the issues or had anyone challenge their approach to them. A moot court exercise is an excellent way to "pretest" your core strategy and arguments.

2. Know and address your (and your opponent's) strongest arguments

The best oral advocates have a "battle plan" that allows them to stay focused on the outcome determinative issues on which they must carry the day in order to win and the reasons why they should.

3. Research the positions of the members of your court

Good advocates are always aware of how members of their court have previously decided issues similar to those involved in the case at hand. As appropriate during argument, refer to any

opinions that members of your court have authored (or participated in) that have any bearing on your case. Be prepared to use a favorable decision and address the problem created by an opinion unfavorable to your case.

4. Understand the broader "policy" implications of your case

Understandably, every lawyer wants to win the case before the court. In deciding a case, justices are seeking to understand how they may avoid unintended consequences. If you are before the supreme court, it is probably because the court thought your case had significance beyond its four corners. Be prepared to address the ways in which the resolution of your case (on the terms you seek) may affect other areas of the law.

C. During Oral Argument

1. Look at and speak to the justices; use an outline, not a script

Advocates bound to their "script" are frequently unable to respond as effectively to the give and take inherent in appellate oral argument and the nonverbal clues as to how well the argument is proceeding.

2. At the outset, outline for the court the structure of your argument

Doing so may forestall questioning from the justices if it is evident that you intend to discuss an issue about which one or more justice might be interested.

3. Briefly frame each major issue before beginning your discussion of it

4. Argue your strongest issues—start with the best

Rely on your brief for the remaining arguments and tell the court that you are doing so.

5. State clearly the relief you want from the court

6. Use visual aids

In an appropriate case—and only if counsel is comfortable using them—the use of exhibits, charts, diagrams, or demonstrative evidence will enliven oral argument and may help the court better understand the case.

7. Remember and observe the time limits

D. Work with the Justices during Questioning

Questions from the bench are one of the best ways an appellate advocate can assess how well understood the argument is and whether, if understood, any justice has difficulty accepting the argument advanced. Oral argument should be considered an opportunity to educate the court.

Justices vary in the extent of their active involvement in questioning during oral argument. Curiously, many advocates resist or openly resent the interruption of their argument by questions posed by members of the court. In as much as the advocate appears at oral argument to persuade the members of the court favorably to resolve the case, one of the goals of

oral advocacy should be to determine whether any justice has a problem with the argument being advanced.

Consequently, advocates should approach oral argument less like a "recital" (that proceeds from beginning to end without interruption), and welcome questions from the bench as an opportunity to: (a) determine how the court may be viewing their case; and (b) persuade the court that the advocate's view is the superior one.

1. Stay calm

Avoid pitched "arguments" with a justice, but hold your ground if you are being pushed unfairly off of your position. If you do not understand a question posed, say so and ask the justice to restate it in a clearer fashion.

2. Listen closely to the questions asked and address them as directly as possible

Questions are asked for any number of reasons that mayor may not be apparent to you. It is possible to overanalyze the motivation and miss the opportunity to understand the gist of a question. Also, pay attention to the questions posed to your adversary and the answers given. Where possible, incorporate appropriate responsive positions into your argument.

3. Know your speaking points and stay "on message"

After answering a judge's question that is off message, return to your point. If you are ahead, don't overreach!

4. Don't assume that questions are an indication of hostility

You should be aware that questions posed by one justice may be asked for the "benefit" of another who may be lying quietly (but hostilely) in the weeds.

5. Admit that the sky is blue

Failure to acknowledge controlling authority and the like simply results in a loss of the advocate's credibility.

6. Deal candidly with surprise

If, notwithstanding all of your preparation, you are surprised by an issue raised during argument, ask for permission to file a short supplemental brief limited to the topic raised.

E. Tactics to *Avoid* at Oral Argument

1. Don't regurgitate your brief

Too frequently, counsel seek literally to recapitulate what they have already presented in their briefs—or worse, try to read large portions of their arguments. In the Michigan Supreme Court, an advocate has, at most, 30 minutes in which to address the critical issues the court ought to consider in deciding the case.

In contrast with the written briefs (which should be comprehensive) the oral argument should be extremely focused and tactical.

2. Don't dwell on background facts supplied in your brief

However, be sure to provide enough factual context to assist members of the court in remembering the specifics of your case. (Remember, yours is probably one of many cases heard in a typical case call.)

3. Take care not to misrepresent the facts or the law

If you inadvertently misspeak, correct your mistake as soon as possible.

4. Don't introduce new issues or enlarge the record at oral argument—and make sure your opponent doesn't try to get away with it either!

Michigan Appellate Advocacy Preferences
Complete Survey Results

Briefs

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
1. The Table of Contents should tell a story and be a concise summary of the argument.	22	28	38	17	12
2. Even though MCR 7.212 does not provide for one, an Introduction can be helpful.	33	55	18	9	3
3. An Introduction interferes with review of the case.	3	6	15	52	42
4. An Introduction should not be a substitute for the Statement of Facts.	95	21	2		
5. The Statement of Questions Presented should include information that gives context to the question(s) asked.	35	48	19	12	4
6. Each discrete Question Presented should state its factual premises as a series of dependent clauses introduced by "where" or "because."	9	28	42	21	17
7. I prefer the Bryan Garner "deep issue" form of Question Presented, i.e., a declarative statement containing the critical facts followed by a short question.	17	29	26	22	23
8. A statement of more than four Questions Presented usually indicates the appellant has not analyzed the case closely enough to make a persuasive argument on the outcome-determinative issue(s).	19	34	37	19	9
9. Questions Presented should be stated in the same order as their corresponding arguments are presented.	102	14	2		

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	2	5
10. In the appellee's brief, the Counter-Statement of Questions Presented should follow the same order as the Questions Presented in the appellant's brief.	64	33	14	6	
11. A Statement of Facts that does not include all the elements required by MCR 7.212(C)(6) is usually not helpful.	26	49	32	10	1
12. I am bothered by a Statement of Facts that includes information unnecessary to resolve the issues on appeal.	25	34	30	25	4
13. A Statement of Facts should be broken up by headings.	6	28	60	21	3
14. I dislike a Statement of Facts that is argumentative.	62	39	9	3	3
15. A Statement of Facts should disclose all pertinent facts, even those that do not help that party's argument.	83	27	5	1	
16. Each factual assertion in the Statement of Facts should be followed by a citation to the record.	74	34	6	4	
17. Misstatements of the record undermine the credibility of the brief.	107	10	1		
18. The appellee should provide a Counter-Statement of Facts even if the appellant's Statement of Facts was accurate and fairly presented the record.	3	11	22	45	37
19. I assume the appellant's statement of the Standard of Review is accurate if the appellee does not dispute it.	4	20	14	49	29
20. An argument that ignores the Standard of Review undermines the credibility of the brief.	37	41	25	12	2

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
21. An argument more than 10 pages long should be preceded by a concise Summary of Argument.	20	53	31	12	2
22. Organize the brief by stating the most persuasive argument first.	41	40	32	5	
23. It is ok to organize arguments chronologically according to when issues arose.	3	46	47	17	5
24. The appellee should organize arguments in the same order as the appellant did.	60	32	14	10	1
25. If an appellee fails to respond to an argument, I view it as a concession.	11	32	21	33	20
26. I tend to skim rather than read blocked quotations longer than six or seven lines.	6	30	19	44	19
27. I prefer short quotations or paraphrased text to long blocked quotations.	23	38	42	14	1
28. I prefer a blocked quotation, even a lengthy one, in order to determine for myself the impact of the cited precedent.	5	36	42	33	1
29. I prefer that a blocked quotation be preceded by a summary of the point of the quotation.	21	59	33	5	
30. If the complete text of a statute or other document is included in the brief as provided by MCR 7.212(C)(7), I prefer a reference to the document instead of a blocked quotation.	5	19	42	44	8
31. Even if record citations for important facts have been provided in the Statement of Facts, the citations should be repeated if the facts are restated in the Argument.	31	48	15	21	3
32. String citations are not helpful.	21	37	34	23	1

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	2	5
33. Multiple authorities for a proposition should be cited with short parenthetical summaries or quotations between citations.	18	44	37	16	1
34. Failure to follow correct citation style affects credibility.	10	40	38	22	8
35. Citations always should include a specific page reference.	73	34	9	2	
36. When a citation lacks a pinpoint cite, I am suspicious whether the authority stands for the proposition for which it is cited.	39	50	14	14	1
37. I like the style of placing in footnotes all citational information other than the names of the parties.	9	9	14	33	53
38. I think all citational material, including party names, should be in a footnote the first time a case is cited.	7	9	17	26	57
39. It has appeared to me that some judges do not read footnotes.	8	10	48	32	14
40. For any purpose, footnotes should be used sparingly.	25	44	28	17	2
41. Substantive arguments in favor of the party's position should not be made in footnotes.	81	31	2	3	1
42. Although MCR 7.212 does not require an Appendix, every significant record document relied on by a party should be included in an Appendix to the brief.	54	42	10	6	6
43. An Appendix should have an index and tabs and should be cited accurately in the brief.	69	36	12		
44. I am annoyed by a Reply Brief that restates the appellant's initial argument without focusing on rebuttal.	53	51	11	2	1

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	3	5
45. Long sentences can be distracting and confusing, even if grammatically correct.	33	50	21	13	1
46. I do not like legalese or old pleading language.	50	45	18	4	1
47. I do not like extensive use of the passive voice.	33	44	35	5	1
48. Bad grammar and punctuation are distracting and undermine confidence in the substantive argument.	56	39	16	6	1
49. I do not like the use of adverbs such as "clearly" or "obviously" in place of logic or authority.	35	41	38	4	
50. Subheadings should be used in an argument longer than four or five pages.	20	40	48	8	1
51. Phrases such as "it is important to note that" are not helpful.	11	27	49	30	1
52. Personal attacks on opposing counsel undermine credibility.	72	38	6	2	
53. Personal attacks on the trial judge undermine credibility.	72	34	8	3	
54. Sarcastic or hostile tone undermines credibility.	71	36	7	4	
55. I would prefer to measure brief "length" by word-count, to allow use of larger type.	9	21	64	18	6
56. I prefer italics to underlines for case citations.	42	35	37		4
57. I dislike capitalizing entire names of parties.	36	32	43	6	1
58. I prefer briefs that use no italics, underlining, bold face or capitalization for emphasis.	3	9	36	30	38
59. Use italics for emphasis.	20	49	37	8	3

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	3	5
60. Use underlining for emphasis.	5	25	45	29	13
61. Use bold type for emphasis.	6	46	35	17	13
62. Use capitalization for emphasis.	2	9	21	49	36
63. Use no more than one form of emphasis.	47	39	20	11	1
64. I like the use of visual aids such as charts and diagrams.	22	60	31	5	
65. I like bullet points.	16	46	45	9	2
66. I like headings in bold rather than underlined.	21	34	56	6	
67. I prefer ragged-right margins to full justification.	5	10	43	26	34
68. Although MCR 7.212 does not provide for such, I like a conclusion that summarizes the merits of the argument.	38	53	19	5	3
69. Each party's Request for Relief should identify the specific relief the reviewing court should grant.	63	48	7		
70. Poor editing and proofreading are distracting and undermine confidence in the substantive argument.	50	55	11		2
71. In my opinion the most important things an appellate brief writer should keep in mind are:			See Appendix A.		

Oral Argument

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	1
72. Oral argument seldom affects my disposition of the case.	17	18	37	14	11

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	2	5
73. Oral argument often helps shape a good decision.	18	31	36	7	4
74. An argument that merely reiterates the brief, i.e., that begins with a comprehensive statement of the facts and repeats the arguments as written, is not helpful.	33	24	32	6	1
75. I do not expect counsel to present an argument on all issues in the case; I prefer that counsel focus narrowly on critical issues.	41	25	26	2	1
76. I prefer for counsel to begin the argument with the formal "may it please the court" introduction.	14	11	56	7	6
77. I prefer for counsel to begin argument with "good morning" or "good afternoon" without "may it please the court."	6	12	58	10	6
78. I expect counsel to be prepared to answer questions about any issue argued in the briefs.	56	23	16		
79. Oral argument almost never should include a lengthy fact recitation.	32	35	26	1	
80. I expect counsel to know the record "cold."	34	30	28	3	
81. I prefer for counsel to refer to the court during argument as "the panel" or "the court."	8	15	65	4	2
82. I prefer to be referred to during argument as "Judge [name]" or "Justice [name]."	15	7	69	1	
83. I prefer to be referred to during argument as "Your honor."	5	6	75	4	1

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	2	5
84. I do not like for counsel to refer to the panel during argument as "Your honors."	12	12	62	5	1
85. I find it useful when counsel acknowledges that I wrote the opinion in or was on a panel that decided a cited case.	19	22	50	1	
86. I expect a candid response to a question, even if it is "I don't know."	54	18	23		
87. I prefer that counsel give complete case law citations in oral argument.		7	51	24	13
88. It is acceptable for counsel to provide shorthand references to cases in oral argument if the full citations are provided in the brief.	33	35	26	1	
89. Visual aids at oral argument can be helpful to the Court if of adequate size and used appropriately.	13	38	43		1
90. Visual aids during oral argument are more time-consuming than useful. I prefer for counsel to hand the Court a copy of a critical document instead of pointing to an enlargement.	4	11	54	18	6
91. Stop arguing if you make your points, even if you have more time.	49	24	19	1	
92. The best appellate oral arguments:	See Appendix B.				

Michigan Appellate Advocacy Preferences
Law Clerk's Survey Results

Briefs

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	2	5
1. The Table of Contents should tell a story and be a concise summary of the argument.	7	10	11	5	3
2. Even though MCR 7.212 does not provide for one, an Introduction can be helpful.	9	20	5	2	
3. An Introduction interferes with review of the case.		2	4	14	16
4. An Introduction should not be a substitute for the Statement of Facts.	31	4	1		
5. The Statement of Questions Presented should include information that gives context to the question(s) asked.	12	15	5	4	
6. Each discrete Question Presented should state its factual premises as a series of dependent clauses introduced by "where" or "because."	2	12	8	8	6
7. I prefer the Bryan Garner "deep issue" form of Question Presented, i.e., a declarative statement containing the critical facts followed by a short question.	6	9	11	4	6
8. A statement of more than four Questions Presented usually indicates the appellant has not analyzed the case closely enough to make a persuasive argument on the outcome-determinative issue(s).	6	10	10	7	3
9. Questions Presented should be stated in the same order as their corresponding arguments are presented.	29	7			

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	2	5
10. In the appellee's brief, the Counter-Statement of Questions Presented should follow the same order as the Questions Presented in the appellant's brief.	15	15	2	4	
11. A Statement of Facts that does not include all the elements required by MCR 7.212(C)(6) is usually not helpful.	7	13	12	4	
12. I am bothered by a Statement of Facts that includes information unnecessary to resolve the issues on appeal.	7	9	10	9	1
13. A Statement of Facts should be broken up by headings.	1	13	15	6	1
14. I dislike a Statement of Facts that is argumentative.	18	13	1	1	2
15. A Statement of Facts should disclose all pertinent facts, even those that do not help that party's argument.	23	12	1		
16. Each factual assertion in the Statement of Facts should be followed by a citation to the record.	25	7	3	1	
17. Misstatements of the record undermine the credibility of the brief.	30	6			
18. The appellee should provide a Counter-Statement of Facts even if the appellant's Statement of Facts was accurate and fairly presented the record.		3	4	14	15
19. I assume the appellant's statement of the Standard of Review is accurate if the appellee does not dispute it.	2	5	3	16	8
20. An argument that ignores the Standard of Review undermines the credibility of the brief.	12	13	5	6	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	2	5
21. An argument more than 10 pages long should be preceded by a concise Summary of Argument.	7	16	11	2	
22. Organize the brief by stating the most persuasive argument first.	11	11	13	1	
23. It is ok to organize arguments chronologically according to when issues arose.	1	11	15	7	2
24. The appellee should organize arguments in the same order as the appellant did.	16	14	2	3	1
25. If an appellee fails to respond to an argument, I view it as a concession.	3	10	6	14	3
26. I tend to skim rather than read blocked quotations longer than six or seven lines.		11	6	16	3
27. I prefer short quotations or paraphrased text to long blocked quotations.	4	12	18	2	
28. I prefer a blocked quotation, even a lengthy one, in order to determine for myself the impact of the cited precedent.	1	12	11	12	
29. I prefer that a blocked quotation be preceded by a summary of the point of the quotation.	5	18	12	1	
30. If the complete text of a statute or other document is included in the brief as provided by MCR 7.212(C)(7), I prefer a reference to the document instead of a blocked quotation.	1	7	13	14	1
31. Even if record citations for important facts have been provided in the Statement of Facts, the citations should be repeated if the facts are restated in the Argument.	8	18	6	3	1
32. String citations are not helpful.	5	10	13	8	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	3	5
33. Multiple authorities for a proposition should be cited with short parenthetical summaries or quotations between citations.	16	14	2	3	1
34. Failure to follow correct citation style affects credibility.	3	10	6	14	3
35. Citations always should include a specific page reference.		11	6	16	3
36. When a citation lacks a pinpoint cite, I am suspicious whether the authority stands for the proposition for which it is cited.	4	12	18	2	
37. I like the style of placing in footnotes all citational information other than the names of the parties.	1	12	11	12	
38. I think all citational material, including party names, should be in a footnote the first time a case is cited.	2	5	5	10	14
39. It has appeared to me that some judges do not read footnotes.	5	3	14	8	5
40. For any purpose, footnotes should be used sparingly.	10	9	8	8	1
41. Substantive arguments in favor of the party's position should not be made in footnotes.	22	13		1	
42. Although MCR 7.212 does not require an Appendix, every significant record document relied on by a party should be included in an Appendix to the brief.	18	11	3	2	2
43. An Appendix should have an index and tabs and should be cited accurately in the brief.	22	11	3		
44. I am annoyed by a Reply Brief that restates the appellant's initial argument without focusing on rebuttal.	17	18			1

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	2	5
45. Long sentences can be distracting and confusing, even if grammatically correct.	8	19	6	3	
46. I do not like legalese or old pleading language.	19	13	4		
47. I do not like extensive use of the passive voice.	14	14	8		
48. Bad grammar and punctuation are distracting and undermine confidence in the substantive argument.	19	10	5	2	
49. I do not like the use of adverbs such as "clearly" or "obviously" in place of logic or authority.	12	14	9	1	
50. Subheadings should be used in an argument longer than four or five pages.	5	13	16	1	
51. Phrases such as "it is important to note that" are not helpful.	3	4	13	15	1
52. Personal attacks on opposing counsel undermine credibility.	20	11	3	2	
53. Personal attacks on the trial judge undermine credibility.	20	11	3	2	
54. Sarcastic or hostile tone undermines credibility.	16	15	3	2	
55. I would prefer to measure brief "length" by word-count, to allow use of larger type.	2	7	15	11	1
56. I prefer italics to underlines for case citations.	13	13	7		3
57. I dislike capitalizing entire names of parties.	10	14	10	1	1
58. I prefer briefs that use no italics, underlining, bold face or capitalization for emphasis.		4	7	8	17
59. Use italics for emphasis.	9	15	7	2	2

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
60. Use underlining for emphasis.	2	11	9	8	5
61. Use bold type for emphasis.	1	18	5	6	5
62. Use capitalization for emphasis.		4	3	16	12
63. Use no more than one form of emphasis.	14	11	3	7	1
64. I like the use of visual aids such as charts and diagrams.	11	14	9	2	
65. I like bullet points.	7	13	14	2	
66. I like headings in bold rather than underlined.	5	9	19	2	
67. I prefer ragged-right margins to full justification.	2	2	7	11	14
68. Although MCR 7.212 does not provide for such, I like a conclusion that summarizes the merits of the argument.	12	19	4		1
69. Each party's Request for Relief should identify the specific relief the reviewing court should grant.	18	18			
70. Poor editing and proofreading are distracting and undermine confidence in the substantive argument.	15	16	4		1
71. In my opinion the most important things an appellate brief writer should keep in mind are:			See Appendix A.		

Oral Argument

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	4	3	4	5
72. Oral argument seldom affects my disposition of the case.	3	8	10	9	3

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	2	5
73. Oral argument often helps shape a good decision.	3	8	10	9	3
74. An argument that merely reiterates the brief, i.e., that begins with a comprehensive statement of the facts and repeats the arguments as written, is not helpful.	5	14	10	2	2
75. I do not expect counsel to present an argument on all issues in the case; I prefer that counsel focus narrowly on critical issues.	9	13	8	3	
76. I prefer for counsel to begin the argument with the formal "may it please the court" introduction.	12	12	7	2	
77. I prefer for counsel to begin argument with "good morning" or "good afternoon" without "may it please the court."	1	5	18	5	3
78. I expect counsel to be prepared to answer questions about any issue argued in the briefs.	4	6	18	3	1
79. Oral argument almost never should include a lengthy fact recitation.	21	8	4		
80. I expect counsel to know the record "cold."	10	14	8		
81. I prefer for counsel to refer to the court during argument as "the panel" or "the court."	11	14	8		
82. I prefer to be referred to during argument as "Judge [name]" or "Justice [name]."	2	5	23	1	1
83. I prefer to be referred to during argument as "Your honor."	2	2	27		

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
84. I do not like for counsel to refer to the panel during argument as "Your honors."	4	3	23	2	
85. I find it useful when counsel acknowledges that I wrote the opinion in or was on a panel that decided a cited case.	7	8	16	1	
86. I expect a candid response to a question, even if it is "I don't know."	15	9	9		
87. I prefer that counsel give complete case law citations in oral argument.		3	18	7	5
88. It is acceptable for counsel to provide shorthand references to cases in oral argument if the full citations are provided in the brief.	11	13	9		
89. Visual aids at oral argument can be helpful to the Court if of adequate size and used appropriately.		20	13		
90. Visual aids during oral argument are more time-consuming than useful. I prefer for counsel to hand the Court a copy of a critical document instead of pointing to an enlargement.		2	19	11	
91. Stop arguing if you make your points, even if you have more time.	16	11	5	1	
92. The best appellate oral arguments:	See Appendix B.				

Michigan Appellate Advocacy Preferences
Justice's Survey Results

Briefs

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	3	3	4	1
1. The Table of Contents should tell a story and be a concise summary of the argument.	1		1	1	2
2. Even though MCR 7.212 does not provide for one, an Introduction can be helpful.	4		1		
3. An Introduction interferes with review of the case.				3	2
4. An Introduction should not be a substitute for the Statement of Facts.	4	1			
5. The Statement of Questions Presented should include information that gives context to the question(s) asked.	2	2	1		
6. Each discrete Question Presented should state its factual premises as a series of dependent clauses introduced by "where" or "because."			3		1
7. I prefer the Bryan Garner "deep issue" form of Question Presented, i.e., a declarative statement containing the critical facts followed by a short question.	3			1	1
8. A statement of more than four Questions Presented usually indicates the appellant has not analyzed the case closely enough to make a persuasive argument on the outcome-determinative issue(s).	1	4			
9. Questions Presented should be stated in the same order as their corresponding arguments are presented.	3	2			

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
10. In the appellee's brief, the Counter-Statement of Questions Presented should follow the same order as the Questions Presented in the appellant's brief.	1	3	1		
11. A Statement of Facts that does not include all the elements required by MCR 7.212(C)(6) is usually not helpful.	1	3		1	
12. I am bothered by a Statement of Facts that includes information unnecessary to resolve the issues on appeal.	2	2			1
13. A Statement of Facts should be broken up by headings.	2	1	2		
14. I dislike a Statement of Facts that is argumentative.	2	3			
15. A Statement of Facts should disclose all pertinent facts, even those that do not help that party's argument.	5				
16. Each factual assertion in the Statement of Facts should be followed by a citation to the record.	3	2			
17. Misstatements of the record undermine the credibility of the brief.	5				
18. The appellee should provide a Counter-Statement of Facts even if the appellant's Statement of Facts was accurate and fairly presented the record.				2	3
19. I assume the appellant's statement of the Standard of Review is accurate if the appellee does not dispute it.		1	1	3	
20. An argument that ignores the Standard of Review undermines the credibility of the brief.	4	1			

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
21. An argument more than 10 pages long should be preceded by a concise Summary of Argument.	3	1		1	
22. Organize the brief by stating the most persuasive argument first.	3	1	1		
23. It is ok to organize arguments chronologically according to when issues arose.		2	2		1
24. The appellee should organize arguments in the same order as the appellant did.	2		3		
25. If an appellee fails to respond to an argument, I view it as a concession.	1	1	2		
26. I tend to skim rather than read blocked quotations longer than six or seven lines.	1	1	2	1	
27. I prefer short quotations or paraphrased text to long blocked quotations.	3		1	1	
28. I prefer a blocked quotation, even a lengthy one, in order to determine for myself the impact of the cited precedent.		3	2		
29. I prefer that a blocked quotation be preceded by a summary of the point of the quotation.	3	2			
30. If the complete text of a statute or other document is included in the brief as provided by MCR 7.212(C)(7), I prefer a reference to the document instead of a blocked quotation.	1		1	2	1
31. Even if record citations for important facts have been provided in the Statement of Facts, the citations should be repeated if the facts are restated in the Argument.	3	1		1	
32. String citations are not helpful.		1	2	1	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	3	5
33. Multiple authorities for a proposition should be cited with short parenthetical summaries or quotations between citations.		2	3		
34. Failure to follow correct citation style affects credibility.	1	2	1	1	
35. Citations always should include a specific page reference.	3	1	1		
36. When a citation lacks a pinpoint cite, I am suspicious whether the authority stands for the proposition for which it is cited.	2	1		2	
37. I like the style of placing in footnotes all citational information other than the names of the parties.	1	1	1	2	
38. I think all citational material, including party names, should be in a footnote the first time a case is cited.	2				2
39. It has appeared to me that some judges do not read footnotes.	1		2	1	1
40. For any purpose, footnotes should be used sparingly.	1	2	1		
41. Substantive arguments in favor of the party's position should not be made in footnotes.	5				
42. Although MCR 7.212 does not require an Appendix, every significant record document relied on by a party should be included in an Appendix to the brief.	3	1	1		
43. An Appendix should have an index and tabs and should be cited accurately in the brief.	4	1			
44. I am annoyed by a Reply Brief that restates the appellant's initial argument without focusing on rebuttal.	1	3	1		

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
45. Long sentences can be distracting and confusing, even if grammatically correct.	1	1	1	2	
46. I do not like legalese or old pleading language.	2				2
47. I do not like extensive use of the passive voice.	1		2	1	1
48. Bad grammar and punctuation are distracting and undermine confidence in the substantive argument.	1	2	1		
49. I do not like the use of adverbs such as "clearly" or "obviously" in place of logic or authority.	5				
50. Subheadings should be used in an argument longer than four or five pages.	3	1	1		
51. Phrases such as "it is important to note that" are not helpful.	4	1			
52. Personal attacks on opposing counsel undermine credibility.	5				
53. Personal attacks on the trial judge undermine credibility.	3	1	1		
54. Sarcastic or hostile tone undermines credibility.	5				
55. I would prefer to measure brief "length" by word-count, to allow use of larger type.		2	3		
56. I prefer italics to underlines for case citations.	1	1	3		
57. I dislike capitalizing entire names of parties.	2	1	1	1	
58. I prefer briefs that use no italics, underlining, bold face or capitalization for emphasis.		1	2		1
59. Use italics for emphasis.	2	2	1		

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	4	4	4	5
60. Use underlining for emphasis.	1	2	1		1
61. Use bold type for emphasis.	1	2		1	1
62. Use capitalization for emphasis.		1		2	2
63. Use no more than one form of emphasis.	3	1		1	
64. I like the use of visual aids such as charts and diagrams.	2	3			
65. I like bullet points.	2	2	1		
66. I like headings in bold rather than underlined.	2	1	2		
67. I prefer ragged-right margins to full justification.	1	1	1	1	1
68. Although MCR 7.212 does not provide for such, I like a conclusion that summarizes the merits of the argument.	3	1		1	
69. Each party's Request for Relief should identify the specific relief the reviewing court should grant.	5				
70. Poor editing and proofreading are distracting and undermine confidence in the substantive argument.	4		1		
71. In my opinion the most important things an appellate brief writer should keep in mind are:			See Appendix A.		

Oral Argument

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
72. Oral argument seldom affects my disposition of the case.	1	2	1		1

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
73. Oral argument often helps shape a good decision.	5				
74. An argument that merely reiterates the brief, i.e., that begins with a comprehensive statement of the facts and repeats the arguments as written, is not helpful.	2	1	2		
75. I do not expect counsel to present an argument on all issues in the case; I prefer that counsel focus narrowly on critical issues.	4	1			
76. I prefer for counsel to begin the argument with the formal "may it please the court" introduction.	1		4		
77. I prefer for counsel to begin argument with "good morning" or "good afternoon" without "may it please the court."			3	1	
78. I expect counsel to be prepared to answer questions about any issue argued in the briefs.	5				
79. Oral argument almost never should include a lengthy fact recitation.	2	2	1		
80. I expect counsel to know the record "cold."	4		1		
81. I prefer for counsel to refer to the court during argument as "the panel" or "the court."	1	1	3		
82. I prefer to be referred to during argument as "Judge [name]" or "Justice [name]."	2	1	2		
83. I prefer to be referred to during argument as "Your honor."	1	1	3		

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	1	5
84. I do not like for counsel to refer to the panel during argument as "Your honors."			5		
85. I find it useful when counsel acknowledges that I wrote the opinion in or was on a panel that decided a cited case.	2	2	1		
86. I expect a candid response to a question, even if it is "I don't know."	5				
87. I prefer that counsel give complete case law citations in oral argument.			3	2	
88. It is acceptable for counsel to provide shorthand references to cases in oral argument if the full citations are provided in the brief.	4	1			
89. Visual aids at oral argument can be helpful to the Court if of adequate size and used appropriately.	4	1			
90. Visual aids during oral argument are more time-consuming than useful. I prefer for counsel to hand the Court a copy of a critical document instead of pointing to an enlargement.			2	1	1
91. Stop arguing if you make your points, even if you have more time.	5				
92. The best appellate oral arguments:			See Appendix B.		

Michigan Appellate Advocacy Preferences
Judge's Survey Results

Briefs

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
1. The Table of Contents should tell a story and be a concise summary of the argument.	6	2	5	3	3
2. Even though MCR 7.212 does not provide for one, an Introduction can be helpful.	9	6	3	1	
3. An Introduction interferes with review of the case.		1	5	7	6
4. An Introduction should not be a substitute for the Statement of Facts.	12	6	1		
5. The Statement of Questions Presented should include information that gives context to the question(s) asked.	8	3	3	4	1
6. Each discrete Question Presented should state its factual premises as a series of dependent clauses introduced by "where" or "because."	2	4	9	2	2
7. I prefer the Bryan Garner "deep issue" form of Question Presented, i.e., a declarative statement containing the critical facts followed by a short question.	2	7	3	3	3
8. A statement of more than four Questions Presented usually indicates the appellant has not analyzed the case closely enough to make a persuasive argument on the outcome-determinative issue(s).	4	3	10	2	
9. Questions Presented should be stated in the same order as their corresponding arguments are presented.	17	1	1		

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
10. In the appellee's brief, the Counter-Statement of Questions Presented should follow the same order as the Questions Presented in the appellant's brief.	11	4	3	1	
11. A Statement of Facts that does not include all the elements required by MCR 7.212(C)(6) is usually not helpful.	6	8	5		
12. I am bothered by a Statement of Facts that includes information unnecessary to resolve the issues on appeal.	7	5	4	3	
13. A Statement of Facts should be broken up by headings.	2	5	11	1	
14. I dislike a Statement of Facts that is argumentative.	13	2	2	1	1
15. A Statement of Facts should disclose all pertinent facts, even those that do not help that party's argument.	15	2	1		
16. Each factual assertion in the Statement of Facts should be followed by a citation to the record.	6	10	1	2	
17. Misstatements of the record undermine the credibility of the brief.	17	1	1		
18. The appellee should provide a Counter-Statement of Facts even if the appellant's Statement of Facts was accurate and fairly presented the record.	1	3	3	6	6
19. I assume the appellant's statement of the Standard of Review is accurate if the appellee does not dispute it.	2	6	3	6	2
20. An argument that ignores the Standard of Review undermines the credibility of the brief.	7	7	4	1	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
21. An argument more than 10 pages long should be preceded by a concise Summary of Argument.	9	6	2	1	
22. Organize the brief by stating the most persuasive argument first.	3	7	5	3	1
23. It is ok to organize arguments chronologically according to when issues arose.	1	6	4	6	2
24. The appellee should organize arguments in the same order as the appellant did.	4	7	5	2	1
25. If an appellee fails to respond to an argument, I view it as a concession.	2	6	5	5	
26. I tend to skim rather than read blocked quotations longer than six or seven lines.	4	11	4		
27. I prefer short quotations or paraphrased text to long blocked quotations.	1	3	7	7	1
28. I prefer a blocked quotation, even a lengthy one, in order to determine for myself the impact of the cited precedent.	3	8	3	5	
29. I prefer that a blocked quotation be preceded by a summary of the point of the quotation.	6	9	2	1	1
30. If the complete text of a statute or other document is included in the brief as provided by MCR 7.212(C)(7), I prefer a reference to the document instead of a blocked quotation.	9	6	2	1	
31. Even if record citations for important facts have been provided in the Statement of Facts, the citations should be repeated if the facts are restated in the Argument.	3	7	5	3	1
32. String citations are not helpful.	1	6	4	6	2

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	1	1
33. Multiple authorities for a proposition should be cited with short parenthetical summaries or quotations between citations.	3	9	5	1	
34. Failure to follow correct citation style affects credibility.	2	6	7	4	
35. Citations always should include a specific page reference.	10	6	3		
36. When a citation lacks a pinpoint cite, I am suspicious whether the authority stands for the proposition for which it is cited.	8	8	2	1	
37. I like the style of placing in footnotes all citational information other than the names of the parties.	2	3	3	5	6
38. I think all citational material, including party names, should be in a footnote the first time a case is cited.	1	1	6	2	9
39. It has appeared to me that some judges do not read footnotes.	1	3	4	8	1
40. For any purpose, footnotes should be used sparingly.	3	9	3	3	
41. Substantive arguments in favor of the party's position should not be made in footnotes.	17	2			
42. Although MCR 7.212 does not require an Appendix, every significant record document relied on by a party should be included in an Appendix to the brief.	8	9	1		1
43. An Appendix should have an index and tabs and should be cited accurately in the brief.	11	6	1		
44. I am annoyed by a Reply Brief that restates the appellant's initial argument without focusing on rebuttal.	8	9	2		

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
45. Long sentences can be distracting and confusing, even if grammatically correct.	10	7	2		
46. I do not like legalese or old pleading language.	9	7	3		
47. I do not like extensive use of the passive voice.	4	8	7		
48. Bad grammar and punctuation are distracting and undermine confidence in the substantive argument.	14	4		1	
49. I do not like the use of adverbs such as "clearly" or "obviously" in place of logic or authority.	6	6	7		
50. Subheadings should be used in an argument longer than four or five pages.	6	7	5	1	
51. Phrases such as "it is important to note that" are not helpful.	3	8	8		
52. Personal attacks on opposing counsel undermine credibility.	16	3			
53. Personal attacks on the trial judge undermine credibility.	15	3			
54. Sarcastic or hostile tone undermines credibility.	18	1			
55. I would prefer to measure brief "length" by word-count, to allow use of larger type.	4	8	5	1	1
56. I prefer italics to underlines for case citations.	7	6	5		1
57. I dislike capitalizing entire names of parties.	5	3	9	2	
58. I prefer briefs that use no italics, underlining, bold face or capitalization for emphasis.		1	7	5	5
59. Use italics for emphasis.	3	9	5	2	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	4	2	2	4	5
60. Use underlining for emphasis.	1	5	8	4	1
61. Use bold type for emphasis.	1	8	7	2	1
62. Use capitalization for emphasis.	1	2	6	9	1
63. Use no more than one form of emphasis.	8	7	4		
64. I like the use of visual aids such as charts and diagrams.	5	7	5	2	
65. I like bullet points.	5	8	5	1	
66. I like headings in bold rather than underlined.	6	7	6		
67. I prefer ragged-right margins to full justification.		4	10	2	3
68. Although MCR 7.212 does not provide for such, I like a conclusion that summarizes the merits of the argument.	6	9	3		1
69. Each party's Request for Relief should identify the specific relief the reviewing court should grant.	14	4	1		
70. Poor editing and proofreading are distracting and undermine confidence in the substantive argument.	11	8			
71. In my opinion the most important things an appellate brief writer should keep in mind are:			See Appendix A.		

Oral Argument

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	4	2	3	4	5
72. Oral argument seldom affects my disposition of the case.	1	5	5	4	3

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
73. Oral argument often helps shape a good decision.	8	7	2	1	1
74. An argument that merely reiterates the brief, i.e., that begins with a comprehensive statement of the facts and repeats the arguments as written, is not helpful.	16	1	1		1
75. I do not expect counsel to present an argument on all issues in the case; I prefer that counsel focus narrowly on critical issues.	16	3			
76. I prefer for counsel to begin the argument with the formal "may it please the court" introduction.	9	2	6	1	1
77. I prefer for counsel to begin argument with "good morning" or "good afternoon" without "may it please the court."	1	4	9	1	3
78. I expect counsel to be prepared to answer questions about any issue argued in the briefs.	16	3			
79. Oral argument almost never should include a lengthy fact recitation.	11	7	1		
80. I expect counsel to know the record "cold."	10	6	2	1	
81. I prefer for counsel to refer to the court during argument as "the panel" or "the court."	4	3	9	2	1
82. I prefer to be referred to during argument as "Judge [name]" or "Justice [name]."	9	2	8		
83. I prefer to be referred to during argument as "Your honor."	2	3	12	2	

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	3	3	4	5
84. I do not like for counsel to refer to the panel during argument as "Your honors."	5	3	8	2	1
85. I find it useful when counsel acknowledges that I wrote the opinion in or was on a panel that decided a cited case.	10	6	3		
86. I expect a candid response to a question, even if it is "I don't know."	19				
87. I prefer that counsel give complete case law citations in oral argument.		2	8	3	6
88. It is acceptable for counsel to provide shorthand references to cases in oral argument if the full citations are provided in the brief.	11	5	2	1	
89. Visual aids at oral argument can be helpful to the Court if of adequate size and used appropriately.	7	7	5		
90. Visual aids during oral argument are more time-consuming than useful. I prefer for counsel to hand the Court a copy of a critical document instead of pointing to an enlargement.	1	6	5	3	4
91. Stop arguing if you make your points, even if you have more time.	17	1			
92. The best appellate oral arguments:	See Appendix B				

Michigan Appellate Advocacy Preferences
Commissioner's Survey Results

Briefs

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
1. The Table of Contents should tell a story and be a concise summary of the argument.	3	8	9	4	2
2. Even though MCR 7.212 does not provide for one, an Introduction can be helpful.	4	17	3	1	1
3. An Introduction interferes with review of the case.	1		2	14	9
4. An Introduction should not be a substitute for the Statement of Facts.	20	6			
5. The Statement of Questions Presented should include information that gives context to the question(s) asked.	4	11	7	2	2
6. Each discrete Question Presented should state its factual premises as a series of dependent clauses introduced by "where" or "because."	3	5	6	5	7
7. I prefer the Bryan Garner "deep issue" form of Question Presented, i.e., a declarative statement containing the critical facts followed by a short question.	4	4	2	6	10
8. A statement of more than four Questions Presented usually indicates the appellant has not analyzed the case closely enough to make a persuasive argument on the outcome-determinative issue(s).	3	10	6	5	2
9. Questions Presented should be stated in the same order as their corresponding arguments are presented.	21	4	1		

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
10. In the appellee's brief, the Counter-Statement of Questions Presented should follow the same order as the Questions Presented in the appellant's brief.	11	8	5	1	
11. A Statement of Facts that does not include all the elements required by MCR 7.212(C)(6) is usually not helpful.	7	8	9	2	
12. I am bothered by a Statement of Facts that includes information unnecessary to resolve the issues on appeal.	2	9	7	8	
13. A Statement of Facts should be broken up by headings.		8	14	3	1
14. I dislike a Statement of Facts that is argumentative.	15	9	1	1	
15. A Statement of Facts should disclose all pertinent facts, even those that do not help that party's argument.	18	6	1	1	
16. Each factual assertion in the Statement of Facts should be followed by a citation to the record.	12	11	2	1	
17. Misstatements of the record undermine the credibility of the brief.	25	1			
18. The appellee should provide a Counter-Statement of Facts even if the appellant's Statement of Facts was accurate and fairly presented the record.	1	1	7	11	6
19. I assume the appellant's statement of the Standard of Review is accurate if the appellee does not dispute it.		7	4	7	8
20. An argument that ignores the Standard of Review undermines the credibility of the brief.	6	6	8	4	2

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	3	5
21. An argument more than 10 pages long should be preceded by a concise Summary of Argument.	4	12	5	3	2
22. Organize the brief by stating the most persuasive argument first.	11	10	5		
23. It is ok to organize arguments chronologically according to when issues arose.		10	12	4	
24. The appellee should organize arguments in the same order as the appellant did.	11	8	5	2	
25. If an appellee fails to respond to an argument, I view it as a concession.	1	7	5	6	7
26. I tend to skim rather than read blocked quotations longer than six or seven lines.	4	4	4	8	6
27. I prefer short quotations or paraphrased text to long blocked quotations.	6	11	8	1	
28. I prefer a blocked quotation, even a lengthy one, in order to determine for myself the impact of the cited precedent.		5	14	6	1
29. I prefer that a blocked quotation be preceded by a summary of the point of the quotation.	6	13	7		
30. If the complete text of a statute or other document is included in the brief as provided by MCR 7.212(C)(7), I prefer a reference to the document instead of a blocked quotation.	1	2	10	10	3
31. Even if record citations for important facts have been provided in the Statement of Facts, the citations should be repeated if the facts are restated in the Argument.	5	9	3	7	2
32. String citations are not helpful.	7	9	8	2	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	3	5
33. Multiple authorities for a proposition should be cited with short parenthetical summaries or quotations between citations.	7	9	8	2	
34. Failure to follow correct citation style affects credibility.	7	9	8	2	
35. Citations always should include a specific page reference.	7	9	8	2	
36. When a citation lacks a pinpoint cite, I am suspicious whether the authority stands for the proposition for which it is cited.	7	9	8	2	
37. I like the style of placing in footnotes all citational information other than the names of the parties.	7	9	8	2	
38. I think all citational material, including party names, should be in a footnote the first time a case is cited.	7	9	8	2	
39. It has appeared to me that some judges do not read footnotes.	7	9	8	2	
40. For any purpose, footnotes should be used sparingly.	7	9	8	2	
41. Substantive arguments in favor of the party's position should not be made in footnotes.	7	9	8	2	
42. Although MCR 7.212 does not require an Appendix, every significant record document relied on by a party should be included in an Appendix to the brief.	7	9	8	2	
43. An Appendix should have an index and tabs and should be cited accurately in the brief.	7	9	8	2	
44. I am annoyed by a Reply Brief that restates the appellant's initial argument without focusing on rebuttal.	14	9	2	1	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	2	5
45. Long sentences can be distracting and confusing, even if grammatically correct.	8	9	4	5	
46. I do not like legalese or old pleading language.	8	10	7	1	
47. I do not like extensive use of the passive voice.	6	9	9	2	
48. Bad grammar and punctuation are distracting and undermine confidence in the substantive argument.	8	13	4		1
49. I do not like the use of adverbs such as "clearly" or "obviously" in place of logic or authority.	5	8	12	1	
50. Subheadings should be used in an argument longer than four or five pages.	3	9	11	3	
51. Phrases such as "it is important to note that" are not helpful.	2	3	13	8	
52. Personal attacks on opposing counsel undermine credibility.	16	9	1		
53. Personal attacks on the trial judge undermine credibility.	16	8	2		
54. Sarcastic or hostile tone undermines credibility.	17	8	1		
55. I would prefer to measure brief "length" by word-count, to allow use of larger type.	1		21	2	2
56. I prefer italics to underlines for case citations.	8	6	12		
57. I dislike capitalizing entire names of parties.	11	8	7		
58. I prefer briefs that use no italics, underlining, bold face or capitalization for emphasis.	2	2	6	6	10
59. Use italics for emphasis.	4	6	13	2	1

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	4	3	4	5
60. Use underlining for emphasis.		1	15	8	2
61. Use bold type for emphasis.		8	12	3	3
62. Use capitalization for emphasis.		1	5	9	11
63. Use no more than one form of emphasis.	6	13	6	1	
64. I like the use of visual aids such as charts and diagrams.	2	16	8		
65. I like bullet points.	1	11	11	2	1
66. I like headings in bold rather than underlined.	4	7	14	1	
67. I prefer ragged-right margins to full justification.	1	1	10	5	9
68. Although MCR 7.212 does not provide for such, I like a conclusion that summarizes the merits of the argument.	9	10	6		1
69. Each party's Request for Relief should identify the specific relief the reviewing court should grant.	13	11	2		
70. Poor editing and proofreading are distracting and undermine confidence in the substantive argument.	10	12	3		1
71. In my opinion the most important things an appellate brief writer should keep in mind are:			See Appendix A.		

Oral Argument

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	1
72. Oral argument seldom affects my disposition of the case.	5	3	9		1

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	3	3	4	5
73. Oral argument often helps shape a good decision.	5	3	9		1
74. An argument that merely reiterates the brief, i.e., that begins with a comprehensive statement of the facts and repeats the arguments as written, is not helpful.	5	3	9		1
75. I do not expect counsel to present an argument on all issues in the case; I prefer that counsel focus narrowly on critical issues.	5	3	9		1
76. I prefer for counsel to begin the argument with the formal "may it please the court" introduction.	5	3	9		1
77. I prefer for counsel to begin argument with "good morning" or "good afternoon" without "may it please the court."	5	3	9		1
78. I expect counsel to be prepared to answer questions about any issue argued in the briefs.	5	3	9		1
79. Oral argument almost never should include a lengthy fact recitation.	5	3	9		1
80. I expect counsel to know the record "cold."	5	3	9		1
81. I prefer for counsel to refer to the court during argument as "the panel" or "the court."	5	3	9		1
82. I prefer to be referred to during argument as "Judge [name]" or "Justice [name]."	5	3	9		1
83. I prefer to be referred to during argument as "Your honor."			16	2	

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	4	4	4	5
84. I do not like for counsel to refer to the panel during argument as "Your honors."	2	4	11	1	
85. I find it useful when counsel acknowledges that I wrote the opinion in or was on a panel that decided a cited case.		3	15		
86. I expect a candid response to a question, even if it is "I don't know."	8	3	7		
87. I prefer that counsel give complete case law citations in oral argument.			10	7	1
88. It is acceptable for counsel to provide shorthand references to cases in oral argument if the full citations are provided in the brief.	5	5	8		
89. Visual aids at oral argument can be helpful to the Court if of adequate size and used appropriately.	2	7	9		
90. Visual aids during oral argument are more time-consuming than useful. I prefer for counsel to hand the Court a copy of a critical document instead of pointing to an enlargement.	1		13	3	1
91. Stop arguing if you make your points, even if you have more time.	6	4	7		
92. The best appellate oral arguments:			See Appendix B.		

Michigan Appellate Advocacy Preferences
"Other" Survey Results

Briefs

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	2	5
1. The Table of Contents should tell a story and be a concise summary of the argument.	5	8	12	4	2
2. Even though MCR 7.212 does not provide for one, an Introduction can be helpful.	7	12	6	5	2
3. An Introduction interferes with review of the case.	2	3	4	14	9
4. An Introduction should not be a substitute for the Statement of Facts.	28	4			
5. The Statement of Questions Presented should include information that gives context to the question(s) asked.	9	17	3	2	1
6. Each discrete Question Presented should state its factual premises as a series of dependent clauses introduced by "where" or "because."	2	7	16	6	1
7. I prefer the Bryan Garner "deep issue" form of Question Presented, i.e., a declarative statement containing the critical facts followed by a short question.	2	9	10	8	3
8. A statement of more than four Questions Presented usually indicates the appellant has not analyzed the case closely enough to make a persuasive argument on the outcome-determinative issue(s).	5	7	11	5	4
9. Questions Presented should be stated in the same order as their corresponding arguments are presented.	32				

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
10. In the appellee's brief, the Counter-Statement of Questions Presented should follow the same order as the Questions Presented in the appellant's brief.	26	3	3		
11. A Statement of Facts that does not include all the elements required by MCR 7.212(C)(6) is usually not helpful.	5	17	6	3	1
12. I am bothered by a Statement of Facts that includes information unnecessary to resolve the issues on appeal.	7	9	9	5	2
13. A Statement of Facts should be broken up by headings.	1	1	18	11	1
14. I dislike a Statement of Facts that is argumentative.	14	12	5		
15. A Statement of Facts should disclose all pertinent facts, even those that do not help that party's argument.	22	7	2		
16. Each factual assertion in the Statement of Facts should be followed by a citation to the record.	28	4			
17. Misstatements of the record undermine the credibility of the brief.	30	2			
18. The appellee should provide a Counter-Statement of Facts even if the appellant's Statement of Facts was accurate and fairly presented the record.	1	4	8	12	7
19. I assume the appellant's statement of the Standard of Review is accurate if the appellee does not dispute it.		1	3	17	11
20. An argument that ignores the Standard of Review undermines the credibility of the brief.	8	14	8	1	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
21. An argument more than 10 pages long should be preceded by a concise Summary of Argument.	1	15	10	6	
22. Organize the brief by stating the most persuasive argument first.	6	12	10	4	
23. It is ok to organize arguments chronologically according to when issues arose.	2	19	10	1	
24. The appellee should organize arguments in the same order as the appellant did.	22	4	2	4	
25. If an appellee fails to respond to an argument, I view it as a concession.	3	7	3	10	9
26. I tend to skim rather than read blocked quotations longer than six or seven lines.		8	3	13	8
27. I prefer short quotations or paraphrased text to long blocked quotations.	6	8	10	8	
28. I prefer a blocked quotation, even a lengthy one, in order to determine for myself the impact of the cited precedent.	2	10	10	10	
29. I prefer that a blocked quotation be preceded by a summary of the point of the quotation.	3	15	10	4	
30. If the complete text of a statute or other document is included in the brief as provided by MCR 7.212(C)(7), I prefer a reference to the document instead of a blocked quotation.	1	7	11	11	2
31. Even if record citations for important facts have been provided in the Statement of Facts, the citations should be repeated if the facts are restated in the Argument.	12	12	3	5	
32. String citations are not helpful.	3	8	9	11	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
33. Multiple authorities for a proposition should be cited with short parenthetical summaries or quotations between citations.	5	8	10	7	1
34. Failure to follow correct citation style affects credibility.	1	13	9	6	3
35. Citations always should include a specific page reference.	20	9	2	1	
36. When a citation lacks a pinpoint cite, I am suspicious whether the authority stands for the proposition for which it is cited.	11	14	5	2	
37. I like the style of placing in footnotes all citational information other than the names of the parties.	2	1	1	9	19
38. I think all citational material, including party names, should be in a footnote the first time a case is cited.	2	1	2	9	17
39. It has appeared to me that some judges do not read footnotes.	1		15	12	2
40. For any purpose, footnotes should be used sparingly.	6	14	9	2	1
41. Substantive arguments in favor of the party's position should not be made in footnotes.	20	10	1	1	
42. Although MCR 7.212 does not require an Appendix, every significant record document relied on by a party should be included in an Appendix to the brief.	12	11	3	3	3
43. An Appendix should have an index and tabs and should be cited accurately in the brief.	18	9	5		
44. I am annoyed by a Reply Brief that restates the appellant's initial argument without focusing on rebuttal.	13	12	6	1	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
45. Long sentences can be distracting and confusing, even if grammatically correct.	3	14	9	5	1
46. I do not like legalese or old pleading language.	11	13	4	3	1
47. I do not like extensive use of the passive voice.	5	13	10	3	1
48. Bad grammar and punctuation are distracting and undermine confidence in the substantive argument.	11	11	7	3	
49. I do not like the use of adverbs such as "clearly" or "obviously" in place of logic or authority.	9	11	10	2	
50. Subheadings should be used in an argument longer than four or five pages.	4	8	16	3	1
51. Phrases such as "it is important to note that" are not helpful.	2	11	12	7	
52. Personal attacks on opposing counsel undermine credibility.	15	15	2		
53. Personal attacks on the trial judge undermine credibility.	18	11	2	1	
54. Sarcastic or hostile tone undermines credibility.	15	12	3	2	
55. I would prefer to measure brief "length" by word-count, to allow use of larger type.	2	4	20	4	2
56. I prefer italics to underlines for case citations.	13	9	10		
57. I dislike capitalizing entire names of parties.	8	6	16	2	
58. I prefer briefs that use no italics, underlining, bold face or capitalization for emphasis.	1	1	14	11	5
59. Use italics for emphasis.	2	17	11	2	

Briefs (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	4	5
60. Use underlining for emphasis.	1	6	12	9	4
61. Use bold type for emphasis.	3	10	11	5	3
62. Use capitalization for emphasis.	1	1	7	13	10
63. Use no more than one form of emphasis.	16	7	7	2	
64. I like the use of visual aids such as charts and diagrams.	2	20	9	1	
65. I like bullet points.	1	12	14	4	1
66. I like headings in bold rather than underlined.	4	10	15	3	
67. I prefer ragged-right margins to full justification.	1	2	15	7	7
68. Although MCR 7.212 does not provide for such, I like a conclusion that summarizes the merits of the argument.	8	14	6	4	
69. Each party's Request for Relief should identify the specific relief the reviewing court should grant.	13	15	4		
70. Poor editing and proofreading are distracting and undermine confidence in the substantive argument.	10	19	3		
71. In my opinion the most important things an appellate brief writer should keep in mind are:	See Appendix A.				

Oral Argument

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	4	3	4	1
72. Oral argument seldom affects my disposition of the case.	7	2	12	1	1

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	2	2	5
73. Oral argument often helps shape a good decision.		7	13	1	
74. An argument that merely reiterates the brief, i.e., that begins with a comprehensive statement of the facts and repeats the arguments as written, is not helpful.	1	6	12	2	
75. I do not expect counsel to present an argument on all issues in the case; I prefer that counsel focus narrowly on critical issues.	3	4	12		1
76. I prefer for counsel to begin the argument with the formal "may it please the court" introduction.	2	2	16		
77. I prefer for counsel to begin argument with "good morning" or "good afternoon" without "may it please the court."		1	16	2	1
78. I expect counsel to be prepared to answer questions about any issue argued in the briefs.	5	8	7		
79. Oral argument almost never should include a lengthy fact recitation.	4	6	9	1	
80. I expect counsel to know the record "cold."	3	5	10	2	
81. I prefer for counsel to refer to the court during argument as "the panel" or "the court."		3	17		
82. I prefer to be referred to during argument as "Judge [name]" or "Justice [name]."			19		
83. I prefer to be referred to during argument as "Your honor."			17		1

Oral Argument (con't.)

Please indicate the extent to which you agree or disagree with the statements below.	Strongly Agree				Strongly Disagree
	1	2	3	4	5
84. I do not like for counsel to refer to the panel during argument as "Your honors."	1	2	15		
85. I find it useful when counsel acknowledges that I wrote the opinion in or was on a panel that decided a cited case.		3	15		
86. I expect a candid response to a question, even if it is "I don't know."	7	6	7		
87. I prefer that counsel give complete case law citations in oral argument.		2	12	5	1
88. It is acceptable for counsel to provide shorthand references to cases in oral argument if the full citations are provided in the brief.	2	11	7		
89. Visual aids at oral argument can be helpful to the Court if of adequate size and used appropriately.		3	16		1
90. Visual aids during oral argument are more time-consuming than useful. I prefer for counsel to hand the Court a copy of a critical document instead of pointing to an enlargement.	2	3	15		
91. Stop arguing if you make your points, even if you have more time.	5	8	7		
92. The best appellate oral arguments:			See Appendix B.		

Michigan Appellate Advocacy Preferences
Complete Survey Results
Appendix A

Briefs

71. In my opinion the most important things an appellate brief writer should keep in mind are:

Justice:

**Be accurate.

Be as brief as possible.

Leave yourself time to reread your work: rewrite, condense and correct it.

Tell the Court not only what relief you seek but what legal analysis the Court should use to get there.

**These points may be most relevant to practice in the MSC

POINT ONE: The Supreme Court it is not primarily an error correcting court as is the Court of Appeals. The principal role of the Supreme Court is to manage the fabric of the law to ensure that its doctrines develop clearly and predictably.

Consequently, an advocate seeking leave to appeal should examine her case to discern and explain why it is 'representational' of some form of problem in the law at large. By contrast, an appellee ought to be able to explain why the appeal presents only case-bound or non-universalizable legal issues. (Even after leave is granted, an advocate should always be looking to determine why the legal questions involved are or are not jurisprudentially significant.) Thus, appellate briefs in the MSC should never fail to address why the case has or lacks jurisprudential significance, even while addressing more mundane means of resolving the unique equities of the case at hand.

POINT TWO: Tell us not only what you want (outcome) but provide us with a doctrinally sound pathway to that point. Your brief ought to provide the thesis statement for the opinion you hope to have the Court render.

POINT THREE: Know the controlling law, whether you are seeking its modification and, if so, the extent of modification and the doctrinal underpinnings of the change you seek.

POINT FOUR: Provide a context - legal and factual. Remember, judges are generalists, not specialists.

POINT FIVE: Edit, edit, edit! Then have someone else read your brief for coherence and persuasiveness.

If an advocate has failed to organize and prioritize his thoughts, chances are the Court will have difficulty in deciphering the core arguments and their relationships.

Judge:

**The audience is not a jury or fact finder. The focus should be on clarity of presentation of the facts and intellectual honesty in the presentation of legal arguments.

**Keep it short.

Give a persuasive but accurate and true factual summary.

Avoid string cites to precedent, and cite the most recent case available that supports your position.

Cite to Michigan case law first, since federal or other state law is not binding.

If no Michigan cases address the issue, explain why the federal or out of state case is persuasive authority. Is the other precedent in the cited state similar to Michigan in other respects, or does it have different standards of review, different statutory schemes, or different common law that makes the precedent less than persuasive under Michigan law?

Deal with the weak points in the case. They do not go away because they are not addressed in the brief.

**Redundancy, lack of specificity, unwillingness to make concessions, hyperbole, and length.

**Get to the point(s) as quickly as possible, without wasting any of the reviewing judge's time.

**There is nothing more deadly that a witness-by-witness summary in the Statement of Facts.

Make your strongest argument first; limit the number of issues (you can, for malpractice purposes, briefly summarize your 'throwaway' arguments at the end but then come back to your strongest argument in your conclusion).

Never mislead the Court; it absolutely kills your credibility and may cost you the case.

Make what is complicated, clear; what is confusing, simple; what disputed, understandable. In other words, keep it simple not because we are stupid but because we read the equivalent of War and Peace every week.

**Accurate, to the point, and brief.

**Make your arguments concise.

**CLARITY AND PLAIN ENGLISH

Commissioner:

**Make your best arguments and forget the rest. Making a weak argument may detract from a good argument or diminish your credibility.

**A clear, concise statement of the relevant facts only is helpful. Do not repeat all the facts in each argument section. Instead, weave in the facts relevant to that argument. Focus on the main cases you are using to support your argument rather than using string cites or multiple cases.

**A reviewing reader does not know your case unless you tell him or her about it.

**In the context of an application for leave to appeal (in the Court of Appeals), the commissioner and Judges will usually not have the lower court record, and may not have an answer from the appellee, or all the relevant transcripts. Therefore, providing a complete factual background, as well as attaching significant record material, is very important.

In general, not disclosing facts which run contrary to the brief writer's position, as well as mischaracterizing evidence, arguments, rulings, or applicable law, can severely undermine credibility.

**Do detailed research, because we check it.

**Provide accurate citations, quote favorable testimony and cases, and do not raise arguments that are likely not to succeed.

**State the best point, in the most concise fashion possible, at the outset. Get the readers' attention, and then lead them from the key or core point to the more complex and subtle arguments and nuisances of the case. Always remember that you can lose your reader, even though your points are accurate, sound, or even profound. The job is to persuade, not to show that you are brilliant.

**Honesty in all things - what actually transpired in the lower court, whether an issue on appeal was raised below, whether the trial court ruled on the issue, the basis for the trial court's ruling, recognition of current case law governing both the standard of review and the issue(s) in the case (and don't forget to shepardize!!).

Clarity and conciseness of argument. State what the issue is, what the applicable law is, and how application of the law to the pertinent facts of the case lead to the result desired. Appeals to sympathy for the client should be restricted to the jury.

**The appellate court reader is like an eavesdropper on the conversation that you, your client, opposing counsel, and the lower tribunals have been having for perhaps many years. You need to step back from your brief and try to look at it from the point of view of a new participant in the conversation. Would a new person understand what you are talking about?

**Keep arguments focused on the application of relevant legal authority to the pertinent facts.

Factual assertions must be supported by the record, legal assertions must be supported by the citation of applicable legal authority (statute, case, court rule). Don't take liberties with

either. Don't just cite cases, explain why they compel a specific result given the facts of the case.

Arguments should be concise and to the point.

Don't just make your own argument. Explain why your opponent's analysis is flawed, citing relevant authority.

Don't waste time and lose credibility by insulting opposing counsel or the trial court.

Avoid reliance on Court of Appeals authority when briefing issues in the Supreme Court.

**Focus, clarity, concision. Appellant: identify the issue and briefly tell me why you are right. Briefly refute the opponent. Appellee: join the issue and tell me why you are right. Briefly refute the opponent. If you refer to facts, specify them. Do not repeat yourself, I repeat, do not repeat yourself.

**Be honest in asserting the facts and law. I read the record and controlling case law. The instant I discover that a party has misstated the facts and misquoted the law, that party loses credibility in my eyes.

**A brief at the appellate level should focus on the law and on a few critical facts without embellishment. Failing to acknowledge adverse facts undermines the credibility of a brief. Questions presented should be questions, not paragraphs, and should refer to the standard of review; they do not need to start with 'whether.' The arguments should be framed in terms of the applicable standard of review and should not contain conclusory statements unsupported by authority. It is helpful to have dispositive exhibits tabbed, numbered and attached to the application, with the first exhibit being the order or judgment that is the subject of the appeal.

**Accurate and fairly presented facts, with citations to the record, and an analysis that employs the applicable standard of review.

**The writers should not assume the readers know the background of the case and applicable law. Clearly explain these matters.

Parties should remember that for applications and original actions, we do not have the lower court record for reference; they should provide all pertinent documentation and refer to it in their statements of fact. For applications from summary disposition orders, the appellant should attach the complaint and the motion & response, both with the attachments provided to the lower court.

Writers should keep out superfluous information and should not degrade opposing counsel or the trial judge; they should exercise civility.

In general, the writing should be clear, concise, nonrepetitive and easy to follow. Writers should not use old, legalese terms. The look of the brief should be 'easy on the eyes,' that is, organized and easy to read.

**Keep organized and brief. All we want is a coherent, logical argument of how the trial court erred and why your client should win.

**Make the statement of facts complete and accurate.

Do not assume that those persons reading the briefs will understand the 'shorthand' terms used in a specialized area of the law (such as worker's compensation).

Avoid the use of phrases such as 'plaintiff/defendant desperately argues'.

**The Supreme Court reviews the Court of Appeals decision, not the trial court decision. Recycling of the Court of Appeals brief in the Supreme Court greatly undermines credibility.

**That they do not need to recite the entire history of the law. For example, while a client may be impressed with a lengthy discussion of the law regarding ineffective assistance of counsel, a citation People v Pickens and recitation of the applicable test is enough for the court. I hate plowing through pages upon pages of generic law (and it happens frequently) to find the one paragraph that relates it to the case. I also cannot emphasize enough how much I dislike Bryan Garner's form of citing cases in the footnotes. It is terribly distracting because you are flipping from text to footnotes all of the time.

**Craft and re-write the brief to obtain the most concise and clearest argument. Avoid repetition. Use Garner's 'deep issue' approach.

**Being concise. Stating legal authority for position. Providing record citation to support factual assertions. Recognizing the standard of review.

**A good brief is not repetitive.

Law Clerk:

**Writers should keep two things uppermost in their minds: (1) the main point of their argument and (2) their reader.

Too many briefs become mired in a host of tangential or weak arguments to the detriment of the strongest ones. A compelling argument is just as compelling without a supporting cast.

Everything should be done to make the job of reading and understanding the brief an easy task. This includes making sure punctuation, spelling, and citations are accurate. But more importantly, it involves clarity, conciseness, and logic. The reader should not have to struggle with a brief as with trying to untangle a knotted ball of string.

The biggest problem with brief writing is the writer often has no empathy for his or her reader.

**A short, accurate summary of facts and proceedings, and a succinct argument with accurate citation to authority.

**An appellate brief writer should always remember the reader. A reader wants a persuasive brief that is concise, easy to follow, well-written, and addresses all relevant questions.

**Providing a clear and direct argument, less is more.

Providing accurate citations to the record.

Pinpoint citations to cases are very helpful.

**(1) the order appealed from; and (2) the lower court record.

**Not to use more words/pages than are necessary to make an argument. Not every argument requires all 50 pages and it's easy to spot the ones that don't!

**Quality of writing and legal argument.

**Precision and accuracy in the argument section, a factually based and record supported statement of facts, and grammar, spelling, and editing.

**Follow the court rules, form concise organized legal arguments, write well, and use correct citation form.

**What is your focus/main point?

If your case was so 'clear,' it wouldn't be here.

Don't obviously pander to the bench (i.e., by quoting specific justices or assuming that using the word 'textualist' will result in victory).

**Who the intended readers will be; know exactly what you are asking for and the larger implications of your request; concise and accurate statements.

**Simply tell me why the lower court erred or was correct, what this court should do about it and why. Give me your top three strongest arguments in favor of your position; don't waste my time with a slew of long shot arguments.

**The appellate brief writer should understand that the reader should not have to make the argument for the writer. Cite proper authority and places in the record to support your argument. If you don't give citation to proper authority, your argument should be waived. If you are making a novel argument, state that in the brief and explain your position. Don't misstate the record, that is why it is extremely important to cite to the record. Also, it is very important to proofread the brief. There is nothing more distracting than bad grammar, spelling and citations.

**Law clerks will spend a great amount of time with each brief. The cases you cite will be used as a starting point for research, so present them clearly and truthfully.

**Identify the strongest issue(s) and focus on those issues.

Provide facts and citation to the record to allow the brief reader to have a full understanding of the case and the issues that are being raised.

Refrain from being argumentative when presenting the facts.

Do not omit pertinent facts or legal authority just because they are detrimental to your argument with regard to the issues being raised.

Do not distort the holdings of the cases to which citation is made.

**Clear table of contents that provides an accurate roadmap through the brief. Concise statement of questions presented pinpointing the legal issues. Concise introduction to allow for the reader to quickly familiarize his or herself with the nature of the case. Neutral statement of facts presenting ALL relevant facts with every statement supported by record citations. Accurate standard of review for EACH issue. Well-organized legal analysis with jump cites supporting every statement of law. Well-reasoned analysis applying the law to the facts. Short conclusion with one or two sentences saying exactly why the party should prevail in a summary manner. Provide the Court with one sentence asking for whatever resolution it seeks. Full set of CHRONOLOGICALLY organized appendices from most recent to oldest. Must start with the order appealed.

**Whether in the Court of Appeals or the Supreme Court, your case had better be significant - and you better put effort into it that reminds us how significant it is. A sloppy or half-hearted effort from the person getting paid to advocate a party's position is a poor way to persuade decision-makers at the highest level.

You must persuade the court, not just preserve arguments and quickly mention key language. A criminal defendant is not entitled to a new trial because an attorney has spotted a lot of issues - a defendant is entitled to a new trial because an attorney has taken those issues and persuasively argued that an injustice has been done.

**To define in clear language what exactly they are arguing.

To cite to the record.

To cite to the jump pages of the cases upon which they rely.

To refrain from relying on cases from sister jurisdictions / federal courts when Michigan cases exist.

To take this Court's standard of review more seriously and to place the standard of review section at the beginning of the argument section instead of at the conclusion of the argument.

I find the Bryan Garner 'deep issue' form of Question Presented useless and distracting. It is useless because the party usually presents its own version of the facts which can be very slanted. I find it distracting because my inclination is to skip the introductory sentence and locate the substantive sentence.

I find that the briefs which footnote the cases tend to lack page jump cites to those cases. It appears that once a case is relegated to a footnote, the party treats it with less respect, and considers it an afterthought, forgetting that it is the case law that may uphold or defeat that party's argument.

**Be accurate, honest, and succinct. Organize legal arguments logically and format lengthy briefs into sections.

**Misstating the law or the facts makes me lose all trust in you and discount your legal analysis, regardless of its accuracy. Your job is to help guide me, to show me where to go and how to get there. Focusing only on your case is completely unhelpful.

**The Statement of Facts (and counter-statement of facts) must accurately cite to the record, and provide detail where necessary, e.g., a cite to a deposition or hearing transcript should include specific page numbers.

Some appellate attorneys may not realize that lower court records are often disorganized, e.g., not in chronological order and/or missing documents, thus I would emphasize the importance of attaching as appendices clear copies of documents/transcripts/pleadings on which the brief relies.

Appellate attorneys should not expand the record below. It would be helpful for briefs to include a statement like 'all appendices were submitted below as [e.g., attachments to the summary disposition motion filed on _____.]'

Particularly in criminal cases, appellate attorneys should ensure their standards of review are up to date.

Argument sections of briefs should include pertinent supporting facts. It is not always obvious which facts support each legal argument.

**I think a brief writer would better serve their clients (appellants) by keying in on a few issues which may have merit, rather than raise a large number of issues. At the very least, a lot of the argument section of the brief should be used for the most important issues. I have noticed that a large number of appellants' briefs raise several issues which clearly have no merit, and this takes pages and time away from the issues which do have merit.

**Write clearly and concisely without presenting a legal treatise or law review article but yet provide enough information to allow the Court to fully understand the facts of the case and the pertinent law. Some briefs, and opinions for that matter, present lengthy and unnecessary legal points and principles in an attempt to show legal brilliance or scholarship, yet it has the opposite effect.

**The people reviewing the case on appeal are not familiar with the factual background of the case or, in many cases, the specific law applicable to the issues presented. It is critical that the parties write with these considerations in mind.

It is critical that the writer(s)spend some time organizing the arguments (and responses) logically before beginning to write. Too often the arguments are presented as a hodge-podge that do not flow logically and include unnecessary or distracting side-arguments.

The writers should include citations to the record for any factual assertions -- and should avoid citing materials outside the record. Failure to cite the record properly wastes the time of everyone who reviews the briefs -- and it may result in the Court ignoring an important point if the Court cannot find record support for it. Also, citing materials outside the record is usually improper, will result in the Court ignoring or rejecting the party's argument, and lowers the party's credibility with the Court.

Despite the understandable press of time, parties should avoid submitting the same brief they submitted in the trial court. It would vastly improve many of the submissions to this Court if the writers simply took the time to edit, revise, and re-draft their trial briefs so that they clean up those briefs and make them specifically address the particular ruling of the trial court that is being presented on appeal.

Time permitting, it is a good idea to have the brief proofed by someone who not only has good proofreading skills, but is unfamiliar with the case. That way, the proofreader can determine whether the argument makes logical sense.

Where the record is unclear (i.e., the position of a vehicle, a residence, or property), it is useful to include a map or diagram as an appendix -- particularly if the parties can jointly agree on one that represents the testimony or facts established by the record.

**Although the questions on this survey are largely stated in absolute terms, each circumstance differs.

Present arguments in the most logical order depending on the facts of your case. If it makes the most sense to address arguments in chronological order, do it.

Main headings in the argument section of your brief should match a question in the statement of questions presented. Do not state a question that does not correspond with an argument or substantially rephrase your question in the main argument heading.

If the writer is addressing a subject that requires technical expertise, the writer should not assume that the brief reader has technical expertise. Not every lawyer is familiar with scientific principles, complex business principles, or terminology used by a specific organization but not an industry as a whole. With respect, provide basic information needed for a layperson to understand the subject matter.

Do not cite bad law. If citing a case that has been reversed on other grounds, provide the subsequent history of the case.

Keep cites to unpublished cases to a minimum and cite them only for factual reference and only if no other published case is on point. Along these lines, do not proceed as though this Court is bound by unpublished cases or cases from other jurisdictions.

Present alternate arguments when applicable. In other words, do not put all of your eggs in one basket. While you may consider the resolution of one issue dispositive, the Court might not, so address the remaining issues.

Be concise, accurate, and persuasive. Remember that this Court does not search for authority to support your position. Conclusory statements are insufficient. Support your argument.

Do not omit unfavorable information from your statement of facts or from your argument. If possible, distinguish unfavorable cases. Respond to your opponent's arguments.

**Be truthful, clear, and concise.

Other:

**Prehearing Research Attorney - be sure you understand your argument before you present it to the court, organize your thoughts, be honest, be clear and concise"

**COA Senior Research - Put best efforts into the strongest arguments, and refrain from raising the weaker ones at all.

Accurate pinpoint citations, of the record or authority, can make a friend of the researcher. Or, they at least facilitate an understanding of the proposition made or authority cited. The advocate should make it as easy as possible for the researcher or judge to verify every assertion made.

**COA Senior Research Attorney - that the Statement of the Questions Presented should serve as the outline for the brief. The discussion of the issues should exactly follow the order and wording of the issues in the Statement of the Questions Presented. Too often attorneys prepare a statement of issues, but then actually argue different issues in their briefs or do not follow the same order. It is sometimes distracting to have to search a brief to find where an attorney discusses each issue if the issues have been reorganized, not clearly labeled or categorized differently from how they were stated in the Statement of the Questions Presented.

**Prehearing - That the brief is the first thing the Court sees and, often times, it is an inexperienced attorney reviewing the case. Therefore, the facts and arguments should be explicitly, yet concisely, set forth in a clear and understandable manner.

**Prehearing Attorney - Organization and grammar are keys. Also, many appellants focus on facts that have nothing to do with the issues and that are really not relevant to the case. Worse, many of these same briefs do not include in the statement of facts those facts that ARE relevant to the issues on appeal.

**Prehearing Attorney - -Clarity, concision, logical organization, proper authority and emphasis on dispositive issues.

Full and dispassionate fact section with thorough citation to the record.

Dispassionate tone in the discussion section thus allowing the focus of the reader to be on the substance of the argument.

**Prehearing Attorney - Keep your arguments as clear and as simple as possible.

Keep your personal feelings about the opposing counsel and, especially, the trial court judge to yourself!

Use the Table of Contents to concisely organize your argument.

In general, focus on clarity so that the reader has no doubts as to your arguments.

**Prehearing Attorney - Clarity, concision, logical organization, proper authority and emphasis on dispositive issues;

Full and dispassionate fact section with thorough citation to the record;

Dispassionate tone in the discussion section thus allowing the focus of the reader to be on the substance of the argument.

**Prehearing Attorney - Addressing all the facts, even the 'negative facts'

JUMP CITES!!

Complete arguments with analysis that address the merits of the issue. Not one-sentence arguments without proper citation.

Relevant legal citation to Michigan law, and not citation to unpersuasive authority.

Raising meritorious issues.

**Prehearing Attorney - The issues stated in the table of contents should match the issues in the Issues Presented section, which should match the arguments. Quite often these three items do not match, and it is difficult to properly review the briefs.

**Prehearing Attorney - Acknowledge law contrary to your position and address it. Don't bury things that do not help your case.

**Research Attorney - Organization and clarity, i.e. have a logical flow to the various issues and arguments presented, and thoroughly explain each premise supporting each argument.

**Research Attorney – 'Brevity is the soul of wit.' I am not impressed when brief writers use several adjectives in a row or when they try to dazzle me with long words rather than plain language. A brief writer who writes as he or she would speak is much more effective than one who pummels the reader with flowery language. One should keep in mind that the judges, law clerks, and research staff have limited amounts of time to focus on each case, and should get to the point as quickly as possible. And, the best way to write any legal issue is to begin by stating the issue, setting forth the relevant rule of law, applying the rule to the facts of the case, and then reaching a conclusion. At Wayne, they call it IRAC (Issue, Rule, Application, Conclusion). It is the most effective way to approach any legal issue.

**Research Attorney - Ease of the court in understanding the argument and the importance of sound legal reasoning. Proper citation to legal authority for all points is also very important.

**Research Attorney - The principal points of argument in the table of contents is not a substitute for the statement of questions presented. The appeal brief should address the merits of the statement of questions presented. The arguments for each question should be supported by both legal authority and citations to the record.

The appeal brief should also specify the judicial ruling that underlies each question or the authority that would permit appellate review without a judicial ruling.

**Senior Research Attorney - Try to make the brief interesting to read, if possible.

**Senior Research Attorney - I think it is important to try to think about how issues will be perceived from a 'neutral' perspective and for the implications in other cases if a holding advocated by a party is adopted as binding precedent in the case at hand. Related to this, counsel should, as part of their advocacy, recognize that it is often important to take reasonable positions as opposed to just asking the Court to adopt a rule most favorable to their clients.

It is also in many cases important for counsel to be aware of the rather dramatic changes in Michigan case law that have occurred in recent years. I believe that in a number of briefs counsel cite standards of review and the like that predate and are inconsistent with currently controlling case law.

**Senior Research Attorney - Address the issues, do not ignore or misrepresent the law or the factual record. Do not repeat yourself, a short brief is better than a long brief that makes the same arguments over and over again. Do not use the short citation form that omits volume numbers (which this Court unfortunately uses in its opinions), it makes it harder to locate the cited authority. Condensed transcripts (2 or 4 pages in each page) are extremely hard to read, don't use them. Make sure that exhibits are filed with the lower court and forwarded with the record on appeal (or attach them as an appendix). File deposition transcripts to be submitted with the record, attaching only a few pages makes me think that you're hiding something. If possible, keep your brief short and straightforward. Do not attach to your brief or appendix documents that which the other party has already submitted, attach those they have omitted.

**Senior Research Attorney - Keep the briefs concise and organized. The argument section should always follow the same order as the statement of questions presented. Within the argument, separate sections and subsections should not generally be used. An argument should logically flow and not be broken up into disjointed pieces. If separate sections are necessary, they should be used sparingly. Finally, the citation of authority in footnotes should be eliminated or strongly discouraged. The briefs are not meant to 'read' or flow like works of literature or articles designed for common reading. They are the format by which the parties present their cases and assist, instruct, and try to persuade the Court with respect to a resolution of the issues. Citation of authority is key to resolving the issues. It should not be relegated to the footnotes. Further, it is very difficult on the eye and is distracting to constantly move from the text of the brief to the footnotes to find citation to the relevant authority.

**Senior Research Attorney - Appellants should ensure that they elaborate their respective arguments on appeal in the manner enumerated within their statements of the questions presented. Appellees should construct their briefs on appeal in a manner that responds to the order of the issues raised by appellants.

All appellate briefs absolutely should include within their arguments citations to the relevant transcripts or other parts of the record on which the parties' rely.

If a party cites a case in support of a proposition, the party absolutely should include the specific page reference where their asserted proposition may be discovered.

**Senior Research Attorney - Provide an accurate and balanced statement of facts.

Make certain that the authorities cited stand for your proposition. Nothing destroys credibility more surely than misrepresenting legal authority.

Argue your client's position strongly and persuasively, but maintain respect and courtesy for the trial court, the other parties, and opposing counsel.

**Prehearing Attorney - Be concise and cite authority.

**Prehearing Attorney - Be concise. Avoid repetition. Cite relevant law to support your argument. Cite the record in your statement of facts. Keep appendices - if any - to a minimum.

**Prehearing Attorney - The primary thing that appellate brief writers should keep in mind is that their only job is to advocate effectively on behalf of their clients. Often times it seems that appellate lawyers, especially those being paid by the state rather than individual litigants, fail to keep this basic premise in mind. For example, prosecutors must realize that writing in a bellicose and condescending tone makes their arguments appear weak and based on emotion rather than legal reasoning. While ending a paragraph with a sarcastic rhetorical question may be appropriate in a low budget courtroom drama, it has no place in a professional's brief. Similarly, public defense attorney should focus on arguing a few meritorious claims well rather than employing the dump truck method of legal writing. If there are two or three legitimate grounds for asserting prosecutorial misconduct, the defendant's cause is not advanced by asserting nine or ten. The legitimate claims receive less attention than they deserve and the addition of numerous weak arguments lowers the writer's credibility.

**Prehearing Attorney - Keeping it brief, not providing unnecessary facts or legal citations.

Binding and tabbing of exhibits or attachments.

3) Proofreading and editing.

**Prehearing Attorney - To be succinct in the arguments.

To check for glaring errors in spelling and punctuation.

To make sure their positions are stated clearly and supported.

**Research Attorney - to be concise, stay focused on the issue being argued, and provide relevant and supportive record citations and case law for the issue being presented.

**Research Supervisor - (1) recognition and adherence to the applicable standard of review; (2) that an appellate court is an error-correcting court, not a forum for rearguing or redeciding a contested factual matter; (3) because an appellate court's review is limited to the record developed below, all factual assertions should include an appropriate citation to the record supporting the matter asserted; (4) legal arguments should give recognition to arguments or authority not supportive of the party's position; and (5)'canned' or boilerplate discussions should be personalized to the case at hand, deleting those portions that aren't necessary or applicable.

**Senior Research Attorney - Zero in on the lower court's error, explaining why the court was in error, and why appellate relief is necessary. Don't just try to present the entire case again de novo, and don't try to substitute outrage and emotion for sound legal reasoning. Focus on the strong issues, don't try to make weight with weak arguments. (If the strong arguments aren't going to work, the weak ones won't, either.)

**Senior Research Attorney - Being concise, to the point; making clear arguments, supported with authority; addressing the legal issues directly.

Michigan Appellate Advocacy Preferences
Complete Survey Results
Appendix B

Oral Argument

92. The best appellate oral arguments:

Justice:

**Anticipate the key points on which the decision will hinge and address them.

Consider where appropriate the impact of the desired result on the jurisprudence of the state.

Are clearly articulated without distractions.

**An oral argument is an opportunity to persuade, not a recital. Understand what your 'speaking points' are so that you are not so wedded to a script that you cannot respond to questions then return to the points you want to make.

The best oral arguments are 'tactical' - narrowly focused on the key factors that compel the outcome the advocate is seeking. All else is a waste of time.

Justice should never be more familiar with the record than appellate counsel.

Judge:

**Are focused and well organized around the dispositive legal arguments with a full grasp if the facts and record. Counsel should be sure to have updated the research in the brief before oral argument. Counsel does not argue with the judges when answering questions and should never personally attack opposing counsel or disparage the trial court or trial counsel. Counsel does not obfuscate or avoid difficult questions - candor is an absolute necessity.

**Be concise.

**Are clear concise and say why it is important to rule this way.

**Present the most important issue(s) in a slightly different way (compared with the written brief), perhaps suggesting why the position advanced is 'equitable' or comports with common sense, rather than merely being supported by the precedent(s).

**Are short and to the point-very few cases need the whole half-hour per side.

Start with the strongest point, address the weakest areas, then finish strong.

Involve counsel who respond directly to questions from the bench, BEFORE going back to the organization chart counsel had prepared in advance of argument. In some cases, counsel even abandons this pre-argument order of presentation because it is obvious what the panel is most interested in addressing.

**Anticipate the strengths of the opponent's arguments and speak directly to them.

Are responsive to the Judges' questions.

Never consist of reading or extensively quoting from the briefs.

Do not dwell on the facts unless they truly are 'outcome determinative.'

Follow (but are not trapped by) a logical outline that leads to a logical conclusion.

**Take their cues from the judges. Listen to the judges and respond to their questions.

**Focus on the most significant substantive issue.

If a significant procedural issue is presented, the issue should be argued by contrasting the procedure used as compared to the procedure called for, and then followed by a statement showing the significance of the failure or error to the proceeding.

Recite statutory text literally.

Do not reference opposing counsel.

Provide direct answers to specific questioning by the court.

Commissioner:

**Answers any questions the judge(s) may have.

**This section does not apply to me.

**Pay attention to the questions being asked and answer those questions. Stop when you are ahead.

**This query is not applicable to my position at the Court.

**Highlight the most persuasive arguments.

Are concise.

Are not 'showy,' and display respect for the other party or parties.

**Are short and to the point. Counsel should be responsive to questions put to them by the panel. Most of these answers, though, are from my appellate experiences prior to joining the court.

**Get to the key point(s) quickly. Refer and/or rely upon new authority that is pertinent to an issue in the case. Respond directly to all questions posed by the judge(s). Don't put the court off by saying, 'I'm about to get to that point.' When appellant, always begin by

requesting or reserving time for a brief rebuttal. If rebuttal is not necessary, thank the court and sit down.

**Address the best arguments in the case right away - why should the trial court be affirmed or reversed? Make the best dispositive arguments and rest on the brief. Also, pick up on what points the panel is concerned with, and re-focus your arguments.

**The best orals are ones that grasp the larger picture. Sometimes the Court will put counsel in a difficult spot by expecting him or her to jump into the middle of the judges' or justices' conversation about an issue to which he or she has not previously been privy. Sometimes that conversation is several steps removed from the case. Nevertheless, the best advocates are prepared and facile enough to 'roll with the punch' and still artfully try to move the conversation in the direction that is most helpful to his or her client's desired result. This requires that counsel be able to remove him or herself from the particulars of the case while being completely aware of the details of that case and the ultimate goal.

**Appellant: Address only the weaknesses in your critical issues; briefly refute the appellee's concern. Appellee: just rebut the points that appellant made, unless you have a 'dead bang winner.' Then sit down immediately.

Law Clerk:

**Should be concise and not a mere regurgitation of materials already contained within the appellate briefs. Attorneys should focus on their strongest argument or on answering questions posed by the Court, which may better facilitate the Court's review of a particular issue.

**The best arguments focus on the few key issues and take the opportunity to flesh out difficult points of law that may still be unclear after the brief. Most of all, the best oral arguments respond to the Justice's questions and concerns, rather than brushing them aside.

**Explain which issues will be focused on and why. Briefly summarize facts, procedural posture, and the relief sought on appeal.

Explain why any errors were or were not harmless (if harmless error analysis applies).

**Are narrow and specific to the most important issues, and key on what questions the Court may have.

**Do not read to the Court.

Focus on the strongest argument.

Briefly reference additional arguments.

Do not recite facts, instead blend the facts into the legal argument that is being presented.

**Are responsive to the questions from the bench and to the direction the bench wants the argument to go. Very important to listen to the difference in the questions and not just keep repeating the same point. Do not try to give the answer you think the bench 'wants,' or to second-guess the reason behind a question. Frustration and hostility show; keep a sense of humor.

**Hit the key issues and do not stray into any irrelevant matters. Further, the best arguments are often those that acknowledge and distinguish contrary authority. Finally, the best arguments are ones that keep the larger picture in mind.

**Are made by the Court members. Sometimes they will help you out, so just answer their questions honestly and directly.

**I do not attend many oral arguments so I cannot give an opinion on this issue. However, I believe the most important place to make your argument is in the written brief.

**Respond to the judge's questions, not the question that the attorney wishes a judge had asked! This is an opportunity for an attorney to learn what the judges' concerns are, and respond to them. If the judges are focusing on an issue that you had not considered or briefed, ask if they would like a supplemental brief.

**Get right to the point of the issue being raised.

Do not reiterate everything that has been stated in the briefs.

Respond directly to the questions posed by the panel.

**Are clear and concise. Assume the Court is familiar with the facts. Focus on the best arguments only. Welcome questions. Are respectful and do not belittle the opponent's arguments.

**Remind the justices briefly what the case is about, gets to the most critical issues, and leaves time for questions that may help the justices decide how to handle the case, or how broadly or narrowly to write the opinion.

Oral argument in the Supreme Court should be the best oral argument in the state of Michigan, and not merely a repetition of the losing arguments or losing style used in lower courts.

**Focus on the dispositive issue and leave side issues or lesser issues to the brief.

Are concise.

Avoid castigating opposing counsel or the lower court.

Are logical.

Take note of recent authority issued after the briefs were filed.

Avoid merely reciting the arguments already made in the brief.

Include discussions of important policy issues that may affect the Court's decision.

Include a concise and specific request for relief.

**Come from well-prepared advocates and focus on the court's questions.

**Are truthful, accurate, clear, complete, and concise.

**Make points not included in the briefs, such as commenting on a case decided after briefing, and answer any questions that the Court may ask.

**The best appellate attorneys recognize that oral arguments are there to address questions that still exist after reading the briefs. The purpose is not to restate the briefs. Therefore, prepared attorneys anticipate questions from the Court and come prepared to answer them.

**Succinctly address the critical issues of the case.

Other:

**Prehearing Research Attorney - My work is generally completed prior to oral argument, but there are occasions when I must listen to arguments on tape. Obviously, visual aids are of no use on review.

**COA Senior Research - Emphasize the strongest points, and include a true depth of knowledge concerning the facts, law, and record involved.

**Prehearing Attorney - Being a prehearing attorney many of the questions in this section are not applicable to me but my belief is as follows:

The argument, as the brief, should be clear and concise, and counsel should be prepared to answer any relevant question from the arguments presented in the briefs, and anticipate any further questions which might arise from the issues involved.

**Prehearing Attorney - This section is not applicable to me. I am not a judge. I am finished with a case before oral argument.

**Research Attorney - Those in which the attorney shows proper deference to the Court and is fully prepared to discuss all the underlying facts and issues, including being able to respond to the opposing party's arguments.

**Research Attorney - Because I am a research attorney and rarely watch oral arguments, I have no feedback regarding what types of oral arguments are the 'best' arguments.

**Research Attorney - Succinctly and clearly articulates the arguments, referencing the applicable caselaw and policy arguments, without slipping into needless facts or side issues.

**Senior Research Attorney - In oral argument, a lawyer should try to be attuned to the points that concern members of the panel and attempt to address those concerns rather than avoiding them.

**Senior Research Attorney - Given my position as a research attorney, I have no opinion with respect to oral argument.

**Senior Research Attorney - focus on the most important dispositive issue raised in the briefs, or on new authority issued since the briefs were written. Counsel should then reply to the other party and answer questions.

**Prehearing Attorney - I do not work in a division that works with oral argument.