

Ten Things Lawyers Should Know about Briefing and Argument
Judge Richard Clifton

1. Get to the point. The attention span of a judge is finite, and there's a lot competing for that attention. Yours is not the only case. Don't bury your main point – the judge might not dig it out.
2. Simplify the case. Why is it "right" for you to win? Develop a short, clear, and direct explanation, then use it in your brief and at oral argument.
3. Keep the judge's perspective in mind – it's the one that matters. If you were the judge, what would you like to know? What would persuade you? Anticipate what questions might be asked. Discuss them in the brief, and be ready at argument.
4. Focus on your target reader (or listener). Will the reader absorb what you intend to say? For example, a long factual narrative or summary of testimony is useless if the reader doesn't know what's important.
5. When a case goes on appeal, give it a fresh look. Appellate judges haven't lived through the case as you may have. We may not care about a lot of what happened before. Our job is to figure out what should be done now.
6. Maintain your credibility. We're going to hear from the other side and look at things for ourselves. If we think that you have distorted the facts or the law, we're not likely to believe anything else you say, in that case or in the future.
7. Know and use the record. Support statements in the brief with precise and accurate citations. Be ready at oral argument to provide an accurate description of the case's history and to supply citations.
8. Be user-friendly in written filings. Use the table of contents of your brief to provide a short outline of your argument. Within the brief, provide a short summary of the key points. Use pinpoint and accurate citations. Make the form easy to use. Where appropriate, tab documents. Don't bind documents in a way that makes it tough to make copies. Provide the right number of copies. It's harder to win when the readers dislike your papers.
9. If you get questions from the bench, be glad. A question identifies what's on the mind of the person you are trying to persuade. Use that information.
10. Comply with the applicable rules. Failure to do so leaves the impression either that you don't know what you're doing or that you don't respect the court enough to be bothered. Neither impression helps you.