



A View from the Bench

Common Errors on Appeals

Judge William Klatt

Columbus, OH

COMMON ERRORS ON APPEAL
December 15, 2011

1. Do you have a final appealable order?
 - R. C. 2505.02
 - Civ. R. 54(B)
 - It's jurisdictional
2. Arguments raised in brief but not covered by an assignment of error generally will not be considered.
 - Too many assignments of error can divert attention from your best arguments and add unnecessary length.
3. Statement of the Case – set forth only what is necessary for the reader to understand the procedural posture of the case;
4. Statement of Facts – set forth only the relevant facts and equities;
 - know the record regardless of whether you were trial counsel;
 - include only what is in the record;
5. Premium on clarity, brevity and organization;
 - failure to write for the reader;
6. Legal arguments should be constructed in the context of the applicable standard of review;
7. Don't use overly inflammatory or shrill language and be careful of loaded words or phrases;
 - Don't cast dispersions on opposing counsel or the lower court;
8. Address contrary legal authority raised in opposing papers;
 - Identify and address contrary controlling authority;

9. Be consistent in how you refer to the parties and pick a designation that is clear to the reader; i.e. plaintiff and defendant or Smith and Jones;
10. Keep case quotes short; Summarize to create the context for the quoted language;
11. Reply briefs can be persuasive if short and to the point; Don't simply restate your prior argument;
12. Editing is critical to achieve a polished and persuasive product;
 - Give special attention to the linchpin(s) of your argument;
13. Oral Argument – generally, a summary of the facts at the beginning is not helpful; Highlight key facts in the context of your legal argument;
14. Identify and prioritize key legal points and focus on those in oral argument;
 - Oral argument is not a complete recitation of your brief;
15. Exhibit a demeanor and pace of speaking that welcomes questions;
16. Be prepared to address ramifications of your argument beyond the facts of your particular case;
17. Use of courtroom exhibits during oral argument is generally inadvisable;
18. Maintain professional and confident demeanor when other side is arguing;
19. Answer the question asked;