

Tips from the Trenches

1. We dislike appellee's briefs in which the issues are so different from the issues presented by the appellant that we can't match the parts of the appellee's brief to the parts of the appellant's brief. In a similar vein, we prefer that appellees use the same names for parties (and other players in the case) that the appellant used.
2. On mandamus, referring to the parties as "plaintiff" and "defendant" is particularly unhelpful. "Relator" and "real party in interest" are better.
3. Another tip for appellees: Don't waste your space by quoting big chunks of the appellant's brief.
4. A few tips for appellants: (1) Always explain the harm caused by the trial court's errors. (2) Always explain how each error was preserved in the trial court, with record citations. (3) Always identify the standard of review—and tailor your argument to that standard of review. (4) Challenge findings of fact specifically; don't make us guess.
5. Appellate jurisdiction: Don't leave home without it. Feel free to include a jurisdictional statement near the front of the brief.
6. Make sure your arguments match your issues so we can correlate them. If you don't use your issues verbatim as the main headings in your argument, consider adding a parenthetical at the end of the main headings such as "(Germane to Issue 1)."
7. Use your table of contents to your advantage by using section headings that flow and spell out why you win. And, of course, make sure your table of contents matches the actual brief.
8. If you use "deep issues," moderate their length. The more issues you raise, the more important this becomes.
9. If you signpost part of your argument with "First," please follow through with "Second" and "Third"; don't make us wonder where one point ends and the next begins.
10. Be careful with pronouns and antecedents. Ambiguity can cause headaches. Legend tells of a case in which two lawyers came to different conclusions about who had done what because of ambiguous pronouns.
11. Similarly, be careful with defined terms. If you define Acme, Inc. and Acme, L.L.C. collectively as "Acme," remember to use "Acme, Inc." or "Acme, L.L.C." when you are referring to a specific company.
12. Use pinpoint citations, both to cases and the record. Give us record citations both in the factual statement and in the argument section of your brief. If the record is multiple volumes, please give us volume numbers, even if the record is consecutively paginated throughout.

13. Direct quotations from authority are generally preferable to paraphrases. And we appreciate it when lawyers make the extra effort to use cases from Texas’s highest courts and from the Dallas Court of Appeals.
14. We prefer citations in the text rather than in footnotes, in part because we want instant gratification as to whether the authority is binding or merely persuasive.
15. If you use a block quotation, use a lead-in that gives the upshot of the quotation as a positive assertion.

BAD: “As stated by the supreme court:”

BETTER: “As the supreme court recently observed, modern rules of proportionate responsibility encourage the joinder of all potentially liable parties:”
16. Avoid excessive use of abbreviations and acronyms. If extensive use of abbreviations is necessary, consider adding a table of abbreviations.
17. Avoid excessive use of **bold**, *italics*, and OTHER FORMS of typographical emphasis. Avoid exclamation points except in quoted material. And avoid asking questions in your brief.
18. Never make ad hominem attacks on the trial judge, opposing counsel, or opposing parties. (Or on the court of appeals in your motion for rehearing.)
19. Humor is rarely a good idea. As one staff attorney said, “It’s not funny on the tenth reading.”
20. Please don’t waste our time with one-sentence or one-paragraph, citation-free “arguments.”
21. This may go by the wayside with electronic filing, but we dislike unnecessarily bulky appendices. Don’t forget the required contents (judgment or other appealable order, jury charges, findings of fact), and consider including the live pleadings if they are important to the argument and not excessively long. Note that TRAP 38.1(k)(1)(C) requires the inclusion of authorities like rules and statutes, but not caselaw. Unless a case is unavailable on Westlaw, we recommend quoting it in your brief instead of including it in your appendix.