Effective Appellate Advocacy Session

1. **Brief Writing:**
2. Missouri Supreme Court Rule 84.04 Briefs-Contents (a) – (i)
3. **Contents.** The brief for appellant shall contain:
4. A detailed table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with reference to the pages of the brief where they are cited;
5. A concise statement of the grounds on which jurisdiction of the review court is invoked;
6. A statement of facts;
7. The points relied on;
8. An argument, which shall substantially follow the order of the points relied on; and
9. A short conclusion stating the precise relief sought.
10. **Jurisdictional Statement.** Bare recitals that jurisdiction is invoked “on the ground that

the case involves the validity of a statute” or similar statements or conclusions are insufficient as jurisdictional statements. The jurisdictional statement shall set forth sufficient factual data to demonstrate the applicability of the particular provision or provisions of article V, section 3, of the Constitution upon which jurisdiction is sought to be predicated. For example: “The action is one involving the question of whether the respondent’s machinery and equipment used in its operations in removing rock from the ground are exempt from the state sales tax law as being machinery and equipment falling within the exemption provided by section 144.030.3(4), RSMo, and, hence, involves the construction of a revenue law of this state.”

1. **Statement of Facts.** The statement of facts shall be a fair and concise statement of the

facts relevant to the questions presented for determination without argument. All statements of facts shall have specific page references to the relevant portion of the record on appeal, i.e., legal file, transcript, or exhibits. If the citation is to the system-generated legal file, it shall include the system-generated appeal document number and page number (e.g., D6 p. 7). If the portion cited is contained in the appendix, a page reference to the appendix shall also be included (e.g., D6 p.7; App 9).

1. **Points Relied On.**
2. Where the appellate court reviews the decision of a trial court, each point shall:
3. Identify the trial court ruling or action that the appellant challenges;
4. State concisely the legal reasons for the appellant’s claim of reversible error; and
5. Explain in summary fashion why, in the context of the case, those legal reasons

support the claim of reversible error.

The point shall be in substantially the following form: “The trial court erred in [*identify the challenged ruling or action],* because *[state the legal reasons for the claim of reversible error]*, in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error].”*

1. Where the appellate court reviews the decision of an administrative agency, rather than a trial court, each point shall:
2. Identify the administrative ruling or action the appellant challenges;
3. State concisely the legal reasons for the appellant’s claim of reversible error; and
4. Explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.

The point shall be in substantially the following form: “The [*name of agency]* erred in [*identify the challenged ruling or action]*, because [*state the legal reasons for the claim of reversible error, including the reference to the applicable statute authorizing* review]*, in that [*explain why, in the context of the case, the legal reasons support the claim of reversible error].”

1. In an original writ proceeding, each point shall:
2. State what relief the petitioner or relator seeks from the appellate court;
3. Identify the action that the petitioner or relator challenges;
4. State concisely the legal reasons for the challenge to respondent’s action; and
5. Explain in summary fashion why, in the context of the case, those legal reasons support the challenge.

For an action in prohibition, the point shall be in substantially the following form: “Relator is entitled to an order prohibiting Respondent from [*describe challenged action]*, because [*state the legal reasons for the challenge]*, in that [*explain why, in the context of the case, the legal reasons support the challenge]*.” For other remedial writs, the introductory language should be altered appropriately.

1. Abstract statements of law, standing alone, do not comply with this rule. Any reference to the record shall be limited to the ultimate facts necessary to inform the appellate court and the other parties of the issues. Detailed evidentiary facts shall not be included.
2. Immediately following each “Point Relied On,” the appellant, relator, or petitioner shall

include a list of cases, not to exceed four, and the constitutional, statutory, and regulatory provisions or other authority upon which that party principally relies.

1. If a party asserts error relating to damages, the party may assert its material effect on the judgment, including that the judgment is inadequate or excessive, in the same “Point Relied On.”
2. **Argument.** The argument shall substantially follow the order of “Points Relied On.”

The point relied on shall be restated at the beginning of the section of the argument discussing that point. The argument shall be limited to those errors included in the “Points Relied On.” For each claim of error, the argument shall also include a concise statement describing whether the error was preserved for appellate review; if so, how it was preserved; and the applicable standard of review.

If a point relates to the giving, refusal or modification of an instruction, such

instruction shall be set forth in full in the argument portion of the brief. Long quotations from cases and long lists of citations should not be included.

All factual assertions in the argument shall have specific page references to the

relevant portion of the record on appeal, i.e., legal file, transcript, or exhibits. If the citation is to the system-generated legal file, it shall include the system-generated appeal document number and page number (e.g., D6 p. 7). If the portion cited is contained in the appendix, a page reference to the appendix shall also be included (e.g., D6 p. 7; App 9).

1. **Respondent’s Brief.** The respondent’s brief shall include a detailed table of contents, a detailed table of authorities, and an argument in conformity with this Rule 84.04.

If the respondent is dissatisfied with the accuracy or completeness of the jurisdictional statement or statement of facts in the appellant’s brief, the respondent’s brief may include a jurisdictional statement or statement of facts.

The argument portion of the respondent’s brief shall contain headings identifying the points relied on contained in the appellant’s brief to which each such argument responds. The respondent’s brief may also include additional arguments in support of the judgment that are not raised by the points relied on in the appellant’s brief.

1. **Reply Briefs**. The appellant may file a reply brief but shall not reargue points covered in the appellant’s initial brief.
2. **Appendix.** A party’s brief shall be accompanied by a separate appendix containing the following materials, unless the material has been included in a previously filed appendix:
3. The judgment, order, or decision in question, including the relevant findings of fact and conclusions of law filed in a judge-tried case or by an administrative agency;
4. The complete text of all statutes, ordinances, rules of court, or agency rules claimed to be controlling as to a point on appeal; and
5. The complete text of any instruction to which a point relied on relates.

An appendix also may set forth matters pertinent to the issues discussed in the brief such as copies of exhibits, excerpts from the written record, and copies of new cases or other pertinent authorities.

The appendix shall have a separate table of contents.

The pages in the appendix shall be numbered consecutively beginning with page A1. The inclusion of any matter in an appendix does not satisfy any requirement to set out such matter in a particular section of the brief.

An appendix to a brief on appeal regardless of the number of pages it contains, shall be filed as a separate document.

1. **Cross Appeals.** If a cross appeal is filed, the plaintiff in the court below shall be deemed

the appellant for purposes of this Rule 84.04, unless the parties otherwise agree or the court otherwise orders. The appellant’s initial brief shall be filed as otherwise provided in this Rule 84.04 and Rule 84.05. The respondent’s initial brief shall contain the issues and argument involved in the respondent’s appeal and the response to the brief of the appellant. The appellant may file a second brief in response to the respondent’s brief setting forth respondent’s appeal and in reply to respondent’s brief opposing appellant’s appeal. The respondent may file a reply brief in reply to appellant’s response to the issues presented by respondent’s appeal. The briefs otherwise shall comply with Rule 84.06. No further briefs shall be filed without leave of the court.

(Adopted June 13, 1979, eff. Jan. 1, 1980. Amended July 27, 1979; amended June 1, 1993, eff. Jan. 1, 1994; Sept. 28, 1993, eff. Jan. 1, 1994; May 15, 1998, eff. Jan. 1, 1999; May 27, 1999, eff. Jan. 1, 2000; May 26, 2000, eff. Jan. 1, 2001; Dec. 15, 2000, eff. July 1, 2001; May 16, 2001, eff. July 1, 2001; May 23, 2001, eff. Jan. 1, 2002; Jan. 28, 2002, eff. Jan. 1, 2003; June 21, 2005, eff. Jan. 1, 2006; Dec. 18, 2007, eff. July 1, 2008; June 28, 2011, eff. Jan. 1, 2012; May 30, 2012, eff. Jan. 1, 2013; May 19, 2016, eff. Jan. 1, 2017; June 30, 2017, eff. Jan. 1, 2018.)

(see *J.L. v. Lancaster*, 453 S.W.3d 348, 350 (Mo. App. W.D. 2015); *Lattimer v. Clark*, 412 S.W.3d 420, 422 (Mo. App. W.D. 2013); and *Fesenmeyer v. Land Bank of Kansas City*, 453 S.W. 3d 271, 274 (Mo. App. W.D. 2016)).

1. Issue Selection (i.e. exclusion of evidence; instruction error)
2. Legal file – include exhibits and other documents needed for appellate court to decide the issues;
3. Case Law – supports argument;
4. Legal Record (i.e. transcripts; pleadings) – ensure the record agrees with the facts you rely on to argue the issues.
5. **Oral Argument**
6. Be totally familiar with the record and transcript;
7. Be prepared to answer questions, not give a speech;
8. Discuss practical implications of the ruling for your client and the legal community.
9. **Western District Special Rules**

**Rule 1. Oral Arguments**

The published oral argument docket will indicate whether the Court has designated a particular case either: (1) for a maximum argument time of fifteen (15) minutes each for appellant and respondent with five (5) additional minutes for rebuttal by appellant; or (2) for a maximum argument time of ten (10) minutes each for appellant and respondent with three (3) additional minutes for rebuttal by appellant. No additional argument time shall be allowed unless the Court for cause shown before the commencement of the argument in any particular case shall order otherwise.

Cross-appeals shall be treated as one cause, and in such cases, the plaintiff in the trial court shall be entitled to open and close the argument. If multiple appellants or respondents desire to present oral argument, they shall divide the allotted time among themselves, but the time shall not exceed the maximum time for a single appellant or respondent as provided in this rule.

In cases in which it is the opinion of the court that oral argument would not benefit the appeal, a letter shall be sent by the Court to the parties or parties’ attorneys advising them of this fact. The parties can request oral argument in writing within 10 days of date of the letter.

(Rule A.01 adopted Jan. 22, 1945. Amended Jan. 12, 1971, eff. April 5, 1971; renumbered to Rule I in 1979. Amended Nov. 22, 1989; amended Oct. 24, 1996, eff. Jan. 1, 1997; amended eff. April 25, 2002; Dec. 18, 2003. Rule number converted from Roman numeral, eff. Feb. 22, 2018.)

**Rule 2. Hearing of Cases**

Appeals in actions for termination of parental rights and adoption shall receive expedited placement on the docket at the conclusion of the briefing schedule. The decision of the court shall be handed down within 30 days of oral argument. Priority for placement on the docket shall next be given to appeals under section 386.540, 188.028, 512.025, 542.301, 573.070, and 632.430.

Any other case shall be heard when it is reached in its regular order on the docket. Any motion to expedite a cause on the docket shall be accompanied by affidavits showing the particular facts on which such is based.

(Rule B.01 adopted Dec. 28, 1945. Renumbered to Rule II in 1979. Amended Aug. 24, 2000, eff. Aug. 28, 2000. Rule number converted from Roman numerals, eff. Feb. 22, 2018.)

**Rule 3. Taking Records from Clerk’s Office**

Counsel and parties in a cause may view the records in the Clerk’s office but shall not remove records and files from the Clerk’s office except upon approval of the Chief Judge or the Clerk and the giving of a written receipt. No file or record shall be removed from the Clerk’s office overnight.

(Rule C.01 adopted and eff. Dec. 28, 1945. Renumbered to Rule III in 1979. Amended Oct. 30, 1986. Rule number converted from Roman numerals, eff. Feb. 22, 2018.)

**Rule 4. Time for Submission, Index and Certification of Exhibits**

In both civil and criminal cases, the parties shall submit their exhibits no later than the date on which they file their initial briefs in this Court.

Exhibits that are not submitted electronically shall be contained collectively in an envelope which has been labeled with the number and style of the case; the name and address of the attorney or party filing the exhibits with the Court; and index of the exhibits enclosed; and a statement signed by the filing attorney or party certifying that the envelope in fact contains those documents listed in the index.

When an exhibit is too large to be contained in an envelope, the exhibit shall be labeled with the number and style of the case and the name and address of the attorney filing the exhibit. An index shall be filed which lists the separately submitted exhibits.

If a case necessitates the submission of both exhibits which may be submitted collectively and exhibits which must be submitted separately because of size, the index affixed to the envelope shall also state the existence and description of the separately submitted exhibits.

A separate index of all exhibits must be provided to be filed and placed in the electronic file.

(Rule C.01-(a) adopted Oct. 2, 1975. Amended eff. July 27, 1979, renumbered to Rule IV and amended in 1979. Amended Oct. 30, 1986; Dec. 18, 2003, eff. April 1, 2004; March 22, 2012, eff. May 1, 2012; Oct. 23, 2014, eff. Jan. 1, 2015. Rule number converted from Roman numerals, eff. Feb. 22, 2018.)

**Rule 5. “Sessions” of Missouri Court of Appeals, Western District**

“Sessions” of the Western District of the Missouri Court of Appeals shall be held for hearing of arguments and disposition of such matters as may be presented to the Court. The date and duration of such sessions as well as the need for and date of any special session shall be determined by the Chief Judge with the concurrence of the Court. The composition of the hearing docket and of the panels to which said hearing docket are assigned shall be determined by the Chief Judge. Lawyers having cases on a hearing docket will be notified as soon as possible of the date of such hearing, but in no event less than 30 days prior to such hearing. No complete docket will be furnished except upon written request. The notice afforded will contain the docket for date of hearing only.

Cases and matters in which oral argument has been waived by written notice to this court by all parties to the appeal will be submitted to a panel of three judges at such time, and in such numbers as the Chief Judge may determine. Such assignment and submission shall not require formal docketing or notice.

(Rule D.01 adopted Nov. 1, 1973, eff. Jan. 1, 1974. Renumbered to Rule V and amended in 1979. Amended eff. Dec. 18, 2003. Rule number converted from Roman numeral, eff. Feb. 22, 2018.)

1. **Final Word**
2. **RELAX** (ha, ha, - easier said than done)

Presented by –Thomas H. Newton, Appellate Judge

Missouri Court of Appeals, Western District