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THE BATON ROUGE LAWYER

THE MAGAZINE OF THE BATON ROUGE BAR ASSOCIATION

Celebrate Pro Bono

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Teen Court of Greater Baton Rouge, a program of the Baton Rouge Bar Foundation, received the LexisNexis Community & Educational Outreach Award for being an outstanding bar public service and law-related education program. Congratulations to the program and to Reagan Haik, BRBA youth education coordinator.



BRBA Bookkeeper Julie Ourso (left) accepted the award Aug. 1, 2024, on behalf of the BRBF Teen Court Program during the 2024 Annual Meeting of the National Association of Bar Executives in Chicago.



BRBA Young Lawyers Section Sidebar with Baton Rouge City Court

Registration: 11:45 a.m.
Judges' Panel: 12 - 1 p.m.
11:45-1 PM | Thursday, Oct. 17
Middleton Bar Center
BRBA Office, 544 Main Street, Baton Rouge, La.

CLE Title: "Do's and Don'ts for Practicing in City Court"

Description: Once upon a time there were five lawyers who became Baton Rouge City Court judges, and they were assigned "very hazardous" duties . . . In this seminar, registrants will learn about those duties and much more as a panel of City Court judges discusses what young lawyers need to know to successfully practice before the court.

Content: This seminar qualifies for 1.0 hour of CLE credit and networking.

Cost Options: **A box lunch is included with the price.**

- \$30 for BRBA Young Lawyers Section members
- \$50 for BRBA members who are not members of the Young Lawyers Section
- \$60 for non-BRBA members

Cancellation Policy: Registration deadline and deadline to cancel without penalty is 4:30 p.m. Tuesday, Oct. 15, 2024. **"No shows" will be billed.**

Questions? Contact Susan Saye for more information: susan@brba.org or 225-344-4803.
Fax completed form to: 225-344-4805. *Make checks payable to: BRBA, 544 Main Street, Baton Rouge, LA 70801.*

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FOR BRBA MEMBERS ONLY: To register for this CLE seminar online and pay by credit card, go to www.BRBA.org, select the EVENTS tab, then click on EVENT LIST and choose the appropriate event.



THE ORAL A

When preparing for my first appellate oral argument, I printed out the entire record on appeal—some 2,000-plus pages, then carted the unwieldy thing to the hearing. It was a rookie mistake.

While I looked primed and prepared for a trial, this was not a trial. As a result, I never opened the box during the argument. Since then, I have refined my approach to oral argument preparation and left the carts and boxes behind. Now, my oral argument preparation centers around what I call the *oral argument toolkit*: two binders that contain only the essential documents and information needed for the hearing.

The toolkit serves two primary functions. First, creating the toolkit is preparation for the oral argument, and the process of crafting the toolkit carries equal weight to the toolkit's substance. Often oral arguments are scheduled several months after final briefs have been submitted. This lapse necessitates revisiting the legal issues and reacquainting oneself with the case's finer details and evidentiary record. Assembling the toolkit demands a meticulous reexamination of the record, briefs and the case's complex legal issues. Thoroughly retracing these steps by creating the toolkit ensures optimal preparation for the upcoming oral argument.

Second, the toolkit serves as a practical resource up to and at the hearing. The toolkit streamlines the process of navigating complex appellate records by distilling voluminous materials into a compilation of essential briefs, pleadings and record evidence. By centralizing your preparation within this toolkit, you can swiftly access and analyze pertinent information without wading through a dense record.

So whether you are preparing for your first or your 50th appellate oral argument, consider creating an oral argument toolkit.

The Oral Argument Binder

My approach is to divide the toolkit into two binders: first, the *oral argument* binder; and second, the *briefs and major documents* binder. The oral argument binder contains the critical materials you will reference at the podium during the hearing itself. Carefully curate this binder to include:

Oral Argument Script and Outline. This item may be controversial to some. Many practice guides and articles on oral argument caution against creating a script.¹ The fear is that the oralist will read directly from the script during oral argument, thus turning what should be a free-flowing question-and-answer session between the advocate and the

ARGUMENT TOOLKIT

by Bradley C. Guin

panel into a stale, rigid lecture. My preparation involves writing out the script, then condensing that script into an outline of the main points that I want to make and the order I want to make them.² If you are concerned about overreliance on the script, then forgo this item and skip straight to the outline. And, as always, do not read from the script or the outline at the hearing.³

Question-and-Answer Table. Prepare for the inevitable back-and-forth by creating a two-column table. List potential questions from the panel in one column, organized by topic area. In the second column, provide corresponding bullet-point answers drawing from the evidence, record materials and legal arguments raised in your briefing.

Challenging Issues and Responses. No case is as open-and-shut as one might hope. Many times, you may think, “I hope the judge doesn’t ask about X or Y.” As tricky as these questions may be, it is essential to tackle thorny issues directly. Having thoughtful responses ready for “hard” questions prevents being caught off guard during questioning.

Caselaw Table. Be prepared to discuss the major cases relied on by the parties in the briefs. Summarize the critical facts, procedural posture, holdings and rationales of the major precedents cited in the briefs. A concise table allows you to reference quickly how these key cases do or do not apply to the case before the court.

Statutory and Regulatory Provisions. If statutory language, regulations or other codified authorities are central to the disputed issues, extract and compile the relevant provisions verbatim into your binder to easily reference during the argument. For example, if a key issue on appeal is whether the trial court erred in admitting or excluding certain evidence on a motion for summary judgment, it is advisable to have the text of Code of Civil Procedure article 966 (or at least the portion of article 966 pertaining to admissible summary-judgment evidence) at hand.

Record Citations List. Before the briefing stage, you should have reviewed the entire record on appeal. During your review, keep track of any notable record citations by creating a list with descriptions and pincites for the record’s important materials.

Critical Record Excerpts. Gather pivotal record excerpts—whether a contract clause, statutory provision or key trial testimony—into a single document. This dedicated compilation ensures easy access to critical evidence throughout the hearing.

The Briefs and Major Documents Binder

The briefs and major documents binder should contain all key written advocacy and record materials related to the appeal that you will not need directly at the podium. It provides a convenient repository for all of the most important case materials in one place. Specifically, this binder should include:

- All briefs filed by the parties (opening, response and reply briefs)
- Any substantive motions filed in the appellate court (e.g., motions to dismiss or strike)
- The judgment being appealed from the lower court
- Any written reasons by the lower court explaining the judgment
- Key pleadings from the lower court that are central to the issues on appeal (e.g., petition or motion for summary judgment)
- Any critical exhibits or evidence from the record

While this supplementary binder will likely remain untouched during the actual oral argument, having the briefs and key record materials consolidated in one place allows for efficient preparation and fact checking ahead of the hearing.

Conclusion

The oral argument toolkit enables you to step confidently to the lectern, having thoroughly retraced your steps through the record and arguments. With key materials organized for easy reference, you can maintain full command of the issues while focusing your delivery on persuasively engaging the court’s questions. Leverage these tools properly, and you will be well equipped to advocate effectively at the oral argument hearing.

¹ See, e.g., Stephen J. Dwyer et al., *Effective Oral Argument: Six Pitches, Five Do’s, and Five Don’ts from One Judge and Two Lawyers*, 33 STETSON L. REV. 347, 356–67 (2010).

² *Id.* at 357.

³ See UNIF. R. LA. CTS. APP. r. 2-15.3 (prohibiting counsel from reading from briefs).