

WINNING AN APPEAL

FOURTH EDITION



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WINNING AN APPEAL

FOURTH EDITION

A short, readable, step-by-step explanation of how to prepare and present your case effectively.

With sample briefs.

MYRON MOSKOVITZ

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PREFACE

I've had quite a bit of experience with the appellate process. I served as law clerk to a Justice of the California Supreme Court, where I saw hundreds of appellate briefs and watched many oral arguments — and how the judges reacted to them. Most of these were in proper *form*, but not many had much effect on how the judges decided the case. They just weren't particularly persuasive. Still, it would have been hard for me to articulate just what was wrong with them, in any general way. I knew what was missing from a particular brief or argument, but I knew of no general principles that might help appellate counsel in all cases.

I've handled quite a few appeals myself, with some measure of success. Why do I win? Like most lawyers, I've attributed my victories to innate brilliance. Could there be some general, unarticulated principles I was following without knowing it? It never occurred to me.

Then something happened that forced some introspection: I was assigned to teach Appellate Advocacy. Teaching the *form* of an appeal was no problem, but how could I teach students the *substance*, if that depended solely on native talents that by their very nature cannot be taught? At most, I might go over particular briefs and oral arguments, criticize them, and hope that my students would somehow get a “feeling” as to how to do it. I assumed that there were few, if any, general principles I could teach on how to win.

Gradually, I learned how wrong I was.

As I read and re-read student briefs, lawyers' briefs, and my own briefs, and as I watched oral arguments, the principles slowly emerged. I was surprised that so many of them involved no brilliant insights, but mere common sense — flavored with a healthy dose of experience. Once students learned these principles, the quality of their work improved enormously.

This book recounts what I have learned.

The text of the book explains the principles. Like a good brief, it is (I hope) concise — you can read the entire text in a couple of hours or so. In the back of the book are three sample briefs *applying* the principles. And before each brief is a description of the thinking *behind* the brief.

Many thanks to Diana D. Sam, Esq. (an excellent appellate lawyer), Professor Peter J. Honigsberg (University of San Francisco), and Professor Randall Aiman-Smith (Hastings) for their helpful comments.

Myron Moskowitz

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