

An Advocate Persuades

An Advocate Persuades

SECOND EDITION

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Dedication

To our son, Sam, who we welcomed to our family as we wrote this book, and to Sol Rocklin, to whom we said goodbye.

RBR & JMR

To Jim and Henry: Although decades have passed and miles have widened since our bus stop days, our friendship, and my deep respect for you both, remains constant in my heart.

CNC

To my mom, Linda Copous, who taught me to love books, and to my lifelong mentor, Amy Blake Hearn, who inspired me to write one.

SCP

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The only person who is educated is the one who has learned how to learn and change.

—Dr. Carl Rogers, psychologist

Just as we hope our students are always learning and open to change, we are always learning and open to change. This second edition is the result of our learning from students, colleagues, scholars in many fields, and practicing lawyers and judges.

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Introduction

Lawyers, in representing their clients, often ask a court to act. A lawyer might ask the court to set bail, exclude certain evidence at trial, order that one party compensate another party, or review a legal decision from a lower court. When asking the court to do something, the underlying question is this: How do you persuade a court to act in a way that benefits your client?

This book answers that question. It explains how to marshal law and facts in the way that will most likely persuade a court that the outcome you seek is justified. In other words, it teaches you how to advocate for your client, in writing and orally.

Before reading on, always remember this: Persuasive writing is not so very different from objective writing. Objective writing seeks to persuade a colleague that your legal analysis is correct. To achieve that end, your arguments must be well organized, make a clear point, and be supported by the law and facts. In addition, your colleague will be more receptive to your arguments if your arguments are presented in a polished, professional-looking document. So, too, with persuasive writing. When writing to a court, your arguments must also be well organized, make a clear point, and be supported by the law and facts. Moreover, a judge, like any other lawyer, will be more receptive to your arguments if they are polished and comply with the court's rules. Thus, when writing as an advocate, you will rely on all the skills you learned when writing objectively.

Accordingly, this book builds on your existing ability to objectively analyze a client's legal question. Here, you will learn about the subtle shift from objective analysis to persuasive argument. For example, persuasive writing usually takes the form of a brief or motion, rather than an objective memorandum of law. The briefs and motions are also directed at a different audience—judges and their law clerks. Writing for this different audience will require you to present both law and facts in a slightly different way, highlighting your strong points and explaining why weaknesses, ultimately, do not undermine your argument.

To help you make the shift from objective analysis to persuasive argument, this book begins by providing some background. In the initial chapters, this book explains what makes an argument persuasive, describes the ethical and professional responsibilities of an advocate, provides an

overview of the litigation process, and introduces you to trial motions and appellate briefs.

The book then walks you through the steps necessary to build a trial motion or appellate brief and to expertly revise and polish your work. The last chapter explains how to prepare for and present oral arguments before trial and appellate courts.

Finally, the appendices provide advice if you are competing in a moot court competition and additional examples of trial motions and appellate briefs. Through these chapters, *An Advocate Persuades* provides a step-by-step guide to producing arguments that can persuade a court to act in your client's favor.