An Advocate Persuades
An Advocate Persuades

Joan M. Rocklin
Robert B. Rocklin
Christine Coughlin
Sandy Patrick
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 my family, and especially my mother and father, for their unconditional love and unfailing support.

CNC

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

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Contents

Acknowledgments \hfill xvii
Introduction \hfill xix

Chapter 1 · The Nature of Persuasion \hfill 3
I. Principles of Persuasion \hfill 3
A. Source and Ethos \hfill 4
B. Content and Logos \hfill 7
C. Audience and Pathos \hfill 9
II. Using the Principles Together \hfill 13
Practice Points \hfill 14

Chapter 2 · The Ethical, Professional Advocate \hfill 15
I. Why Act Ethically and Professionally? \hfill 15
II. Some Guiding Principles \hfill 16
A. A “Zealous Advocate” Is Not a “Zealot” \hfill 17
B. “It Is What It Is” \hfill 18
C. “Winning” Is a Relative Term \hfill 19
III. Specific Rules an Advocate Should Know \hfill 20
Practice Points \hfill 22

Chapter 3 · A Litigation Overview \hfill 23
I. Civil vs. Criminal Litigation \hfill 24
II. Civil Litigation \hfill 25
A. Pre-Trial \hfill 25
B. Trial \hfill 27
C. Post-Trial \hfill 29
D. Appeals \hfill 30
III. Criminal Litigation \hfill 31
A. Pre-Trial \hfill 31
B. Trial \hfill 33
C. Post-Trial \hfill 35
1. Motions \hfill 36
2. Sentencing \hfill 36
3. Entry of judgment \hfill 37
D. Appeals and Other Post-Conviction Remedies \hfill 37
Chapter 4 · Motion Practice

I. A Trial Motion and Its Parts
   A. The Motion 40
   B. The Supporting Memorandum of Law 43
   C. Factual Support 47

II. The Rules That Govern Trial Motions 49
   A. Procedural Rules 49
   B. Local Rules 50
   C. Standing Orders 50
   D. Finding the Rules 51
   E. Following the Rules 53
   F. Unwritten Rules 53

III. After the Motion Is Drafted 53
   A. Service and Its Proof 54
   B. Filing with the Court 55
   C. The Opposing Party's Response 56
      1. Statement of non-opposition 56
      2. Consent order 57
      3. Memorandum of law in opposition 58
   D. The Moving Party's Reply Memorandum 58

Practice Points 58

Chapter 5 · Appellate Practice

I. Appellate Briefs 62

II. The Rules that Govern Appeals 75

III. The Court and Its Players: Judges, Law Clerks, and Staff Attorneys 75

IV. The Appellate Process 76
   A. The Decision to Appeal 76
      1. Whether to appeal 77
      2. Which issues to raise on appeal 77
   B. The Notice of Appeal 79
   C. The Record 80
   D. The Briefs 81
   E. Oral Argument 81
   F. The Opinion 82
   G. Petitions for Reconsideration or Rehearing 82
   H. Review in a Discretionary Court 84
   I. Motions in Appellate Courts 85

V. Fundamental Appellate Concepts 86
   A. Appellate Jurisdiction and Justiciability 86
   B. Preservation of Error and Plain Error 87
   C. Harmless Error 89
   D. Right for the Wrong Reason 89
   E. Standards of Review 90
1. Rulings on issues of law
2. Factual findings
3. Discretionary rulings
4. Mixed questions of fact and law
5. No articulated standard of review

Practice Points

Chapter 6 · Themes for Persuasive Arguments
I. The Purpose of a Theme
II. Developing a Theme
   A. Based on Procedural Law
   B. Based on Substantive Law and Its Underlying Policy
   C. Based on a Social Good or Value
   D. Based on Undisputed Law, Facts, or Values
III. When to Develop a Theme

Practice Points

Chapter 7 · Organizing Persuasive Arguments
Section 7.1 · Organizing Claims and Arguments
I. Organizing Multiple Claims
   A. Order Your Claims
   B. Tell the Reader the Order of Your Claims
II. Organizing Multiple Legal Arguments Within a Single Claim
   A. Order the Arguments Within a Claim
      1. Elements
      2. Steps
      3. Factors
   B. Use a Roadmap Section to Tell the Reader the Order of Your Arguments
      1. Conclusion
      2. Governing rule
      3. Disposing of uncontested elements or factors
      4. Mapping the remaining arguments
      5. Final conclusion
III. Introducing Sub-Arguments
IV. Organizing a Single Legal Argument

Practice Points

Section 7.2 · Structuring Analogical Arguments
Practice Points

Section 7.3 · Structuring Rule-Based Arguments
I. A Simple Rule-Based Argument
II. Statutory Construction Arguments
III. Policy Arguments
IV. Syllogisms 144
   Practice Points 146

Section 7.4 · Using Rule-Based and Analogical Arguments Together 147
   Practice Points 149

Section 7.5 · Structuring Factor Analyses 151
   I. Factors Analyzed as a Single Legal Argument 151
   II. Factors Analyzed in Multiple, Distinct Legal Arguments 154
   III. Choosing an Organizational Structure for a Factor Analysis 159
   Practice Points 160

Chapter 8 · Developing Persuasive Arguments 161
   I. Begin with Your Conclusion 162
   II. Explain the Law Persuasively 162
      A. Rules 163
         1. Explain existing rules from your client’s perspective 163
         2. Develop rules that advance your client’s argument 166
         3. Acknowledge unfavorable rules in a favorable way 172
      B. Case Illustrations 174
         1. Highlight helpful facts 174
         2. Create hooks for your case illustrations 177
         3. Acknowledge unfavorable cases in a favorable way 179
   III. Apply Your Persuasive Explanation of the Law to the Facts 179
      A. Developing Your Application 179
      B. Responding to Your Opponent’s Analysis 182
   IV. End with a Final Conclusion 184
   Practice Points 185

Chapter 9 · Refining Persuasive Arguments 187
   I. Core Concepts 188
      A. Assert Your Point. Then, Provide Details. 188
      B. Use Location to Your Advantage 189
      C. Be Explicit 190
   II. Persuasion Through Point Headings 191
      A. Create Assertive Point Headings 191
      B. Coordinate Your Point Headings 192
      C. Use Short Point Headings 193
      D. Divide the Text into Readable Chunks 193
      E. Use a Professional, Easy-to-Read Format 194
   III. Paragraph-Level Persuasion 196
      A. The Thesis Sentence 196
      B. The Middle of the Paragraph 198
      C. Final Sentences 199
D. Coherence Throughout

IV. Sentence-Level Persuasion

A. Beginning, Middle, and End
B. Subjects and Verbs
   1. Place the subject and verb close together and at the beginning of the main clause
   2. Prefer the active voice
   3. Prefer evocative verbs
   4. Avoid “it is” and “there are”
   5. Use a noun instead of “it”
C. Dependent Clauses
D. Short Sentences

V. Persuasion through Quotations

A. Quote When Specific Words Matter
B. Quote for Emphasis
C. Avoid Block Quotes, but If You Must Use Them, Assert Your Point First

VI. Persuasion through Citations

A. Build Credibility Through Citations
B. Emphasize the Weight of Authority
C. Show a Trend Through Citations
D. Use Explanatory Parentheticals Effectively

Practice Points

Chapter 10 · Constructing Motions and Supporting Memoranda of Law

I. Your Audience: The Trial Judge
II. The Motion
   A. Caption
   B. Statement of the Relief Requested
   C. Legal Grounds for the Relief Requested
   D. Signature
III. The Memorandum of Law
   A. Caption
   B. Introduction
   C. Statement of Facts
   D. Argument
   E. Conclusion
   F. Signature
Practice Points

Chapter 11 · Constructing Appellate Briefs

I. Appellant’s Brief
   A. Cover
   B. Table of Contents
   C. Table of Authorities
D. Statement of Jurisdiction 238
E. Issue (or Question) Presented 238
   1. The components of an effective issue presented 239
   2. One or more sentences? 241
   3. Incorporating the standard of review 241
F. Statement of the Case 242
G. Summary of the Argument 243
H. Argument
   I. Conclusion and Relief Sought 247
II. Respondent’s Brief 248
III. Appellant’s Reply Brief 249
Practice Points 250

Chapter 12 · Statements of Fact and of the Case 251
I. Statements of Fact vs. Statements of the Case 252
II. Present the Conflict and Your Client 253
   A. Frame the Conflict 253
   B. Cast the Characters 254
III. Decide Which Facts to Include 255
   A. Include All Legally Significant Facts 256
   B. Include Enough Background Facts to Provide Context 256
   C. Include Emotional Facts Selectively 257
   D. Include Procedural Facts 259
   E. Weed Out Irrelevant Facts 261
IV. Organize Your Statement of Facts 263
   A. Create an Opening Paragraph that Provides Context and Draws the Reader In 263
   B. Choose a Logical Organization 265
   C. Use Point Headings to Guide Your Reader 267
   D. Close Your Statement of Facts 268
V. Create a Persuasive Statement of Facts 268
   A. State Facts Accurately 269
   B. Maintain a Reasonable Tone 269
   C. Use Strong Thesis Sentences When Appropriate 269
   D. Highlight Good Facts and Minimize Unfavorable Facts 271
      1. Use location to your advantage 271
      2. Give more airtime to favorable facts 273
      3. Pair unfavorable facts with favorable facts 274
   E. Choose Your Words Carefully 275
      1. Choose vivid detail 275
      2. Choose strong verbs 276
   F. Provide Clear, Accurate Citations to the Record 277
   G. Let the Facts Determine the Length 278
   H. Draft and Re-Draft 278
Practice Points 279
Chapter 13 · Editing and Polishing for Persuasion

I. Check Your Procedural and Local Rules
II. Your Argument
   A. Edit for Focus
      1. Review your thesis sentences
      2. Review your point headings
      3. Integrate your theme
   B. Edit for Emphasis
      1. Review your explanations of the law
      2. Compare your explanation of the law to your application
      3. Address your weaknesses
   C. Edit for Flow
      1. Provide roadmaps
      2. Smooth transitions
   D. Polish for Clarity
      1. Bring subject and verb close together and toward the front of the sentence
      2. Minimize passive voice
      3. Minimize nominalizations
      4. Look for and revise unwieldy sentences
   E. Polish for Credibility
      1. Check your procedural and local rules (again)
      2. Proofread
      3. Check citations
      4. Check the format

III. Statements of Fact (or of the Case)

IV. If You Are Drafting a Motion and Supporting Memorandum of Law
   A. Edit Your Introduction
   B. Edit All Remaining Sections
   C. Polish Your Introduction and All Remaining Sections

V. If You Are Drafting an Appellate Brief
   A. Edit Your Issue Presented
   B. Edit the Summary of Your Argument
   C. Edit All Remaining Sections
   D. Polish the Question Presented, Summary of the Argument, and All Remaining Sections

VI. Customize Your Editing Checklist

Chapter 14 · Oral Argument

Section 14.1 · The Purpose of Oral Argument
   I. The Court’s Goals
      A. Clarify Factual and Legal Points
      B. Determine the Practical Impact of a Ruling
II. The Advocate’s Goals

A. Ensure that the Court Understands Your Argument 316
B. Correct Misapprehensions and Address Concerns 316
C. Respond to Claims That You Did Not Address in the Briefs 316

Practice Points 317

Section 14.2 · Preparing for Oral Argument 319

I. Create a Strong Foundation 321
A. Review the Briefs 321
B. Know the Record 322
C. Know the Law 322
D. Review the Court’s Rules 323

II. Prepare Your Argument 323
A. Determine “Where the Game Will Be Played” 324
B. Determine the Strengths and Weaknesses of Your Position and Your Opponent’s Position 324
C. Know the Boundaries of Your Position 325
D. Anticipate Every Question the Court Will Ask and Prepare Responses 326
E. Involve Others 327

III. Prepare Written Materials 327
A. Script Your Opening 327
1. Movant’s or appellant’s opening 328
2. Respondent’s opening 330
B. Create Lectern Materials 331

IV. “Where Do I Park?” and Other Practical Matters 336
A. Visit the Courtroom 336
B. Investigate Court Protocol 336
C. Choose Your Attire 337

Section 14.3 · Presenting Oral Argument 339

I. Your Frame of Mind 340
II. Inhabit Your Space Confidently 340
III. Leave Your Baggage Behind 341
IV. Make Eye Contact 341
V. Speak Slowly and Simply 342
VI. Have a Conversation 342
VII. Use Humor with Care 342
VIII. Assert Conclusions, Not Your Beliefs 343
IX. Deliver Your Opening 343
X. Respond to Questions from the Bench 344
A. Stop Talking and Listen 344
B. Pause 345
C. Ask for Clarification, If Necessary 345
D. Respond with “Yes” or “No”; Then Explain Your Answer 345
## CONTENTS

**Appendix C · State v. Lynwood Appellate Briefs**

I. Summary of the Arguments 401
II. Skills and Techniques 403
III. The Briefs 405
   A. Appellant’s Opening Brief 407
   B. Respondent’s Answering Brief 425

Index 445
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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 facts and law 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, pro-
vides 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.