

# Advocacy Strategies: The Law Clerk Perspective

**Lydia Locklear** (Lumbee) Deputy Tribal Attorney, Catawba Nation

**Joaquin Ray Gallegos** (Jicarilla Apache and Santa Ana Pueblo) Judicial Clerk, U.S. Court of Appeals, 10<sup>th</sup> Circuit

**Alexander Mallory** (Winnebago Tribe of Nebraska) Attorney Advisor, U.S. DOJ Honors Program

**Roshanna Toya** (Pueblo of Isleta) Judicial Clerk, New Mexico Court of Appeals

**Moderator: Rodina Cave Parnall** (Quechua) Pre-Law Summer Institute Director, American Indian Law Center, Inc.

# Dos and Don'ts of Brief Writing

- DO provide a roadmap for the court to adopt
- DO use citations accurately and as much as possible
  - Includes citations to caselaw and the record
- DO proofread your brief
- DO know the rules of the court you're filing in
  - Know proper citation formatting, page limit, etc.
- DON'T distort caselaw
- DON'T write in passive voice
  - Active voice: Matt drafted the brief.
  - Passive voice: The brief was drafted by Matt.

# Dos and Don'ts of Oral Arguments

- DO know the rules of the court you're arguing in
- DO practice your argument beforehand
- DO edit your background to prevent distractions if arguing virtually
- DO understand the technology you're using if arguing virtually
  - Conduct a practice argument using the same technology
- DON'T argue issues that you did not include in your brief

# State v. Rodriguez, A-1-CA-37776 (Oct. 2021)

We find it necessary to specifically identify some of the many errors in defense counsel's briefing. These include numerous grammatical errors, failure to follow Rule 23-112 NMRA for proper citation formatting, failure to provide pinpoint citations for cited authority, a table of authorities that fails to accurately reflect the page numbers where authorities may be located, failure to include authority or appropriate authority in support of legal assertions, failure to include a standard of review on most issues, failure to cite to the record proper for factual assertions, failure to point to the district court's findings, conclusions, or orders that are subject to appeal, and failure to comply with brief formatting requirements. Additionally, Defendant's brief in chief extends well beyond the page limitation imposed by Rule 12-318(F)(2) NMRA. Though we are not required, we nevertheless consider the arguments set forth by Defendant past the applicable page limit, but remind Defendant and counsel that "in light of the rules regarding page limits and the requirements for briefing, we encourage litigants to consider carefully whether the number of issues they intend to appeal will negatively impact the efficacy with which each of those issues can be presented." Rio Grande Kennel Club v. City of Albuquerque, 2008-NMCA-093, ¶¶ 54-55, 144 N.M. 636, 190 P.3d 1131.

# Suggested Reading

- The Elements of Style by William Strunk JR. and E.B. White
- Robert E. Bacharach. Legal Writing: A Judge's Perspective on the Science and Rhetoric of the Written Word (2020)
- Bryan A. Gardner. The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts, 3d Ed. (2014)