RESULTS OF THE 2009 JUDICIAL SURVEY

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I. INTRODUCTION

This Spring, the Appellate Section's Member Services Committee sent a survey to the Texas Supreme Court and to each of the fourteen courts of appeals. The Committee co-chairs, Kent Rutter and JoAnn Storey, prepared the survey and tabulated its results. The survey consists of 64 questions, which cover brief writing, oral argument, motion practice, and miscellaneous topics.

89% of the justices responded to the survey. The following courts of appeals had a 100%-response rate:

First (Houston)
Second (Fort Worth)
Fifth (Dallas)
Sixth (Texarkana)
Eighth (El Paso)
Tenth (Waco)
Eleventh (Eastland)
Twelfth (Tyler)
Thirteenth (Corpus)
Fourteenth (Houston)

The results of the survey are provided below. In some instances, a justice may have given comments concerning a particular question. Those additional comments follow the particular question and answers. Some of the questions called for more than one answer; therefore, the results for those questions do not add up to 100%.

The Committee wishes to thank each of the justices of each of the courts for their overwhelming response and enthusiastic support for this project. Because of the strong participation of the justices, we are confident that the results accurately reflect the views of the appellate judiciary in Texas.

II. BRIEFS

A. Format

1. Which of the following should be used to identify the parties in the brief?

26.5%	Their status on appeal: appellant/appellee.
3.6%	Their status at trial: plaintiff/defendant.
57.8%	Proper names or descriptive labels: Bank of America, the Bank.
10.8%	No preference.

Additional comment: Whether to use names or party identification depends on whatever it takes to minimize confusion; if your issues are substantive, you may be better with party names, while procedural issues may be better presented by referring to the parties as plaintiff/defendant or appellant/appellee (depending on what procedural issue it is).

2. Which font or fonts do you prefer? (Please check all that apply.)

66.3%	Times New Roman.
6.0%	Century.
6.0%	Other serif fonts.
26.5%	No preference.

Additional preference: Non-serif fonts (1.2%).

3. What is your preference for font size?

51.9%	13 point, the minimum required by TRAP 9.4.
48.1%	14 point, as the Fifth Circuit requires.

4. Would you favor a change in the TRAPs from page limits to word limits for briefs?

19.3%	Yes. A change to word limits might encourage practitioners to use larger fonts.
47.0%	No.
33.7%	No preference.

5. How should counsel emphasize language?

25.3%	**Bold.**
24.1%	*Italics.*
16.9%	***Bold italics.***
2.4%	<u>Underlined.</u>
31.3%	No preference.

Additional comment: Do not overuse bold, exclamation points, adverbs etc. to emphasize points. I find it insulting as I am generally capable of picking out what's important.

6. Most briefs I read are:

0.0%	Too short.
40.2%	About the right length.
50.0%	Longer than necessary.
9.8%	Much longer than necessary.

Additional comments:

- Most briefs I read are longer than necessary. Many, but not most, are much longer than necessary.

- This question presents a Goldilocks' choice. Well-written briefs are the right length. Abysmal briefs are much longer than necessary.

7. What do you find acceptable concerning the arrangement of the sections of the brief? (Please check all that apply.)

   43.9% Statement of Facts, Summary of the Argument, Argument.
   63.4% Introduction, Statement of Facts, Summary of the Argument, Argument.
   34.1% Summary of the Argument, Statement of Facts, Argument.

8. Should counsel end the brief with a short conclusion, or just a simple prayer?

   59.0% Conclusion and prayer.
   14.5% Just a prayer.
   26.5% No preference.

   Additional comment: Be sure to state in your prayer the exact judgment you are seeking. Don't just use boiler-plate prayer and don't make us guess how you want the appellate judgment to read.

9. In your view, can it be helpful for practitioners to include graphs, charts or pictures in the body of the brief?

   67.1% Yes.
   9.8% No.
   23.1% No preference.

B. Table of Contents

10. Do you find the Table of Contents to be helpful?

    69.7% Yes.
    4.9% No.
    25.6% Only if the Table of Contents repeats headings from the Statement of Facts and the outline of the Argument section of the brief.

    Additional comment: The Table of Contents should <u>always</u> be used as an outline of your issues and arguments.

C. Authorities

11. If there is controlling precedent from the Texas Supreme Court and from your Court on an issue, what should counsel do?

    14.6% Cite to the Texas Supreme Court.
    0.0% Cite to our Court.
    84.1% Cite to the Texas Supreme Court and our Court.
    1.2% No preference.

    Additional comment: Don't weigh down your brief with unnecessary cites, especially string cites. You are <u>not</u> writing a law review article and <u>we don't have time to read one</u>.

12. Do you prefer that counsel place case cites in the text or in footnotes?

    35.4% In the text, always.
    48.8% In the text, except that long string cites, if any, may be placed in footnotes.
    8.5% In footnotes.
    7.3% No preference.

    Additional comment: Lawyers spend far too much energy worrying about the "footnote wars."

13. Do you approve when a party attacks procedural or technical deficiencies in the opponent's brief?

    15.8% Yes, a party has a right to insist that its opponent follow the rules.
    76.8% Yes, so long as the deficiencies are not minor or hypertechnical.
    7.3% No.

D. Statement of Facts

14. Statement of Facts — objective or persuasive?

    56.1% The Statement of Facts must be purely objective.
    43.9% The Statement of Facts should be persuasive, although not argumentative.

    Additional comment: The Statement of Facts should be objective. The Statement of Facts may be persuasive, although not argumentative.

E. Issues

15. In a civil appeal of moderate complexity, how many issues do you expect to see from a wise advocate?

    42.7% Two to four.
    52.4% Three to five.
    4.9% Four to six.
    0.0% Seven or more.

    Additional comment: No matter the size of a case, there are <u>rarely</u> more than two or three winning and controlling issues.

16. How do you prefer that the appellant phrase the issues?

71.1% As a positive statement: e.g., "The trial court erred in excluding the expert testimony on the issue of whether the moon is made of green cheese."

3.6% As a question: e.g., "Did the trial court err in excluding the expert testimony on the issue of whether the moon is made of green cheese?"

6.0% Neutrally: e.g., "Whether the trial court erred in excluding expert testimony on the issue of whether the moon is made of green cheese?"

8.4% As a positive assertion of law, followed by a question: e.g., "Expert testimony is reliable if it is grounded in the methods and procedures of science, and if it is more than mere subjective belief or unsupported speculation. Did the trial court abuse its discretion in failing to follow this guiding rule and principle in excluding the expert testimony on the issue of whether the moon is made of green cheese?"

10.8% No preference.

Additional comment: Always cut out unnecessary words. You are competing for the Court's attention. Clarity in everything.

F. Argument

17. What is your preference concerning the Argument section of the brief?

20.7% Counsel should organize the Argument in outline form.

45.1% Counsel should restate each issue, followed by all of the argument that pertains to that issue.

34.1% No preference.

Additional comment: Counsel should organize the Argument in outline form and have a conforming Table of Contents.

18. Is it important for a party to refute every argument made by the opponent, no matter how spurious?

71.1% Yes. Explain briefly why the argument is spurious.

28.9% No.

G. Footnotes

19. What is your advice regarding footnotes?

16.9% Use footnotes liberally, and I will decide how much attention to give them.

65.1% Use footnotes sparingly, and only in the proper context.

18.1% The best practice is to avoid footnotes altogether.

Additional comment: Use footnotes very sparingly.

20. Which of the following is an appropriate use of footnotes? (Please check all that apply.)

20.7% Case citations.

67.1% String citations.

34.1% Record references.

19.5% Elaboration of argument presented in text.

92.7% Explanation of peripheral issues.

Additional comment: If important to your argument, it should be in the body of the brief.

H. Appendix

21. What do you want in the appendix, in addition to the necessary contents listed in TRAP 38.1(j)(1)? (Please check all that apply.)

43.4% The one or two most important Texas cases.

37.3% Law from other jurisdictions.

67.5% Excerpts of pivotal testimony.

95.2% Exhibits or critical documents.

Additional comment: You would be amazed at the frequency with which lawyers raising contract construction (or other text-specific) issues omit the document containing the critical text from the appendix.

22. What should a party do with a big appendix?

75.9% Copy it and bind it separately.

14.5% Append it to the brief, if possible.

9.6% No preference.

I. Reply and Post-Submission Briefs

23. Reply briefs: should the appellant/petitioner file one?

32.5% Yes, in most cases.

49.4% Only if the appellee/respondent raises an unanticipated argument, such as waiver.

18.1% No preference.

Additional comment: Use it to truly reply and not to just restate the arguments in your brief.

24. If the reply brief raises a new argument, will you accept a short additional brief from the appellee/respondent?

    63.4% Yes.
    34.1% Yes, if accompanied by a motion for leave.
    2.4% No.

25. When should a party file a post-submission brief? (Please check all that apply.)

    92.8% When a panel member invites a post-submission brief.
    61.4% Even without a specific invitation, to address questions that arose at argument and were not addressed in the briefs.
    54.2% Even without a specific invitation, to provide more a complete answer to a question posed during oral argument.
    78.3% Even without a specific invitation, to advise the Court of new law.

26. In your experience, how often do post-submission briefs affect the disposition of the appeal?

    35.8% Sometimes.
    56.8% Rarely.
    7.7% Never.

    Additional comment: Because it is rarely done, the "pool" of responses would suggest "rarely" to be the appropriate response. However, when done well, and when appropriate, they "sometimes" have a positive influence.

J. Electronic Briefs

27. If you have received electronic versions of briefs in Adobe Acrobat (PDF) format, in addition to paper copies, have you found them useful?

    30.9% Yes.
    7.4% PDF versions are of limited use, unless I have electronic copies of the other party's brief and the record as well.
    11.1% No.
    50.6% I have not had experience with PDF versions of briefs.

    Additional comments:

    ◘ I would not [find them useful] because I read all briefs and legal memos and the cases <u>together</u>. I cannot <u>critically</u> read a brief on a computer screen. Can't read everything issue by issue on a computer screen.

    ◘ Compact discs of the brief are very helpful.

28. If you have received "E-Briefs," which contain links to the cited legal authorities and portions of the record, have you found them useful?

    33.3% Yes.
    7.4% No.
    59.3% I have not had experience with "E-Briefs."

    Additional comment: I would not [find them useful], again, because to critically read a case, I need a hard copy to highlight and mark up and analyze. I also want hard copies, with post-its to use to ask questions in oral argument.

III. ORAL ARGUMENT

29. If a party forgets to request oral argument when the brief is filed, will you consider a late request?

    50.6% Yes.
    49.4% Yes, if filed before submission.
    0.0% No.

    Additional comment: I will consider a late request if filed well before submission (before the 21-day notice letter goes out).

30. How should a party belatedly request oral argument?

    45.7% A letter to the clerk is acceptable.
    43.2% The party must file a motion pointing out the error and asking the Court to allow oral argument.
    1.2% The party must ask for leave to file a corrected brief that includes the request on the cover.
    9.9% No preference.

    Additional comment: Filing a motion pointing out the error and asking the Court to allow oral argument will get the assigned judge's attention quickly.

31. What is your view of statements regarding oral argument, which are permitted by new TRAP 38.1(e)?

    65.8% They are likely to be helpful.
    17.1% They are unlikely to be helpful.
    17.1% No preference.

Additional comments:

- Statements regarding oral argument are likely to be helpful if thought goes into writing them. Use the oral-argument rule for guidance and explain how oral argument would aid the decisional process of the court.

- An explanation for oral argument should be tailored directly to the case – not just [state] that this is important, etc.

32. The Fifth Circuit occasionally notifies the parties, before oral argument, that the Court is particularly interested in certain issues. Have you served on a panel that has done so?

    35.4% Yes.
    14.6% No, because our pre-submission schedule does not allow the panel to identify such issues far enough in advance of the argument.
    50.0% No.

33. What is your view about notifying the parties before argument that the Court is interested in particular issues?

    61.0% It's a good idea.
    12.2% It's a bad idea.
    26.8% No preference.

    Additional comment: It's a good idea. But, remember, just because the Court wants to discuss the issue, it does not mean that the other points will not be covered.

34. In civil cases where the parties request oral argument, how often do believe oral argument is necessary?

    34.1% Less than 25% of the time.
    39.0% 25% - 50% of the time.
    20.7% 50% - 75% of the time.
    6.1% More than 75% of the time.

    Additional comments:

    - [Less than 25% of the time]. I grant more arguments than most, but still only in about 2 of 8 cases set for submission.

    - [Less than 25% of the time]. An excellent brief will usually address all the issues as fully as oral argument.

35. Does waiving oral argument create a perception that a party does not believe in its case?

    1.2% Yes.
    15.9% Sometimes.
    82.9% No.

    Additional comment: Not for me. I have reversed trial court judgments without argument when the error is obvious and harmful.

36. How often does oral argument significantly change your view of a case?

    40.2% Less than 10% of the time.
    50.0% 10% - 25% of the time.
    9.8% 26% - 50% of the time.
    0.0% More than 50% of the time.

    Additional comment: [26% - 50% of the time] I may not change my mind as to outcome, but it helps on specific issues. I may drop one line of reasoning in favor of another.

37. Which of the following do you regularly encounter at oral argument? (Choose all that apply.)

    29.3% Visibly reacting to opposing counsel's argument.
    10.7% Inappropriately referring to opposing counsel.
    14.7% Addressing the Court too informally.
    57.3% An emotional or fact-based "jury argument."
    10.7% Shuffling papers, digging in boxes, etc.
    76.0% Failing to directly answer questions from the panel.
    49.3% Following a planned presentation, instead of addressing questions from the panel.
    24.0% Unfamiliarity with relevant opinions authored by panel members.
    33.3% Unfamiliarity with the record.
    41.3% Inability to discuss the practical consequences of a possible decision.

    Additional comments:

    - This question required an answer so I gave one.

    - [Failing to directly answer questions from the panel] BIG TIME. Counsel needs to be resilient and answer the questions asked. You are there to help the Court and you cannot help it without answering the questions.

    - Answering questions at oral argument is the most important matter. Don't spend a lot of time

explaining the facts and procedural background at oral argument.

◘ The most critical advice for oral argument is to know the record; be ready to tell us where to go in the record to find support for your position.

38. When is it acceptable for counsel to go outside the record during oral argument?

64.2% Only when a member of the panel asks a question that requires the lawyer to go outside the record, with a prefatory explanation that the answer requires going outside the record.
14.8% When the lawyer tells the Court that he or she is going outside the record, and explains why.
21.0% Never.

39. "May it please the court," then what?

61.7% The lawyer should identify himself or herself and the client.
4.9% The lawyer should identify everyone present for the party.
33.3% The lawyer should proceed without further introduction.

Additional comment: After introducing yourself, begin oral argument by identifying which issues you are going to argue (and think through whether you should argue every issue).

40. Which of the following should be the advocate's primary focus during argument?

43.2% The legal authority applicable to the appeal.
0.0% Policy arguments that support your client's position.
19.8% An equal mix of legal authority and policy.
37.0% It depends on which one bolsters the party's position in a particular case.

Additional comment: If your primary focus during argument is the policy arguments that support your client's position, you are probably in trouble.

41. Which of the following best represents the advice you would give an advocate concerning style and tone?

22.2% Be formal in demeanor, tone, and word choice.
56.8% Be formal in demeanor and tone, but less formal in word choice.
12.3% I prefer a less formal presentation.
8.6% None of the above.

Additional comments:

◘ Carry on a respectful conversation with the panel.

◘ [None of the above] Everyone has their own manner of presentation.

42. What should the advocate do when the Court expresses strong disagreement with an argument?

16.0% Keep trying to persuade the Court, if there is any chance of changing a panel member's mind.
46.7% Make a strategic concession and explain why it should not affect the outcome of the appeal.
37.3% Move on to a different argument.

Additional comment. Make your point, but do not get bogged down with a judge that is acting irrationally. If the judge is ranting, ask the judge to phrase the question, try to answer it, and then move on.

43. Who do you prefer argue the case?

11.7% An appellate practitioner, always.
66.2% An appellate practitioner, so long as he or she knows the record well.
0.0% The lawyer who tried the case, always.
22.1% The lawyer who tried the case, so long as he or she makes an appellate argument and not a jury argument.

Additional comments:

◘ It doesn't matter if well done. It doesn't matter if poorly done.

◘ No preference; should be whoever will do the best job.

44. Which of the following best describes your view about lawyers splitting oral argument?

73.4% Splitting the argument is unwise, unless it is necessary because the various appellants or appellees have interests that are not aligned.
26.6% Even if not strictly necessary, splitting argument can be beneficial because it

gives each party's attorney an opportunity to address the Court.

Additional comment: No preference, if they perceive it beneficial to presentation of their case.

45. When the parties split argument, how would you prefer that they do it?

59.2% By party, so that each lawyer addresses all issues on behalf of a particular party or parties.
40.8% By issue, so that each lawyer address a particular issue or issues on behalf of all aligned parties.

Additional comments:

- It depends on the case and the issues.
- Both ways.
- Doesn't matter.
- Depending on the case, either option may be appropriate.

46. Can it be appropriate for counsel to use humor during oral argument?

54.9% Yes, but sparingly.
40.2% Sometimes. Follow the lead of the panel.
4.9% No.

Additional comment: Most planned humor fails. Spontaneous humor is to be expected (and necessary).

47. Which type of visual aid is the most effective at oral argument?

3.7% A posterboard chart, with type large enough to read from the bench.
40.2% A posterboard chart with large type, accompanied by a matching handout for the Court and opposing counsel.
36.6% A handout for the Court and opposing counsel.
2.4% None of the above.
17.1% No preference.

48. When should an advocate waive rebuttal?

9.9% When his or her opponent offered nothing that wasn't addressed by the opening argument.
72.8% Only after asking the panel members if they have questions.
17.3% Never.

Additional comment: [Only after asking the panel members if they have questions]. <u>And</u> if you can tell the Panel did <u>not</u> agree with Appellee's argument.

49. What should an advocate do when the red light comes on?

11.5% Stop and sit down.
19.2% Wrap it up quickly.
69.2% Acknowledge that time is up and ask if he or she may finish answering the question.

Additional comment: If your argument is helpful, we will probably go over the time limit without penalty on rebuttal.

50. How often do you find oral argument helpful enough to continue asking questions after the red light comes on?

14.6% Often.
62.2% Sometimes.
22.0% Rarely.
1.2% Never.

Additional comment: I will let an argument continue if a single judge has dominated the time. I'll let you make your point.

51. Practitioners may be interested to know that (please check all that apply):

86.1% I am sympathetic to your scheduling conflicts, but please do not wait until the last minute to file a motion to reschedule oral argument.

Add'l comment: (Emphasis on <u>please do not wait until last minute</u>). Case will probably be submitted without argument.

41.8% I am sympathetic to your scheduling conflicts, but I do not consider hearings in the trial court or depositions to be worthy reasons to reschedule oral argument.

Add'l comment: If the case comes at issue and you know you will have a conflict, let us know before you get your 21-day notice letter.

78.5% I am sympathetic to a motion to postpone oral argument for a personal reason, such as a family vacation.

Add'l comment: Let us know well in advance.

29.1% If you plan to use demonstrative aids during oral argument, I would prefer that you file them in advance, not on the day of the argument.

57.0% I understand that your client may believe it is necessary to "get in the last word" by filing a supplemental pre- or post-submission brief, but I find that such briefs usually repeat what you have already said and are not helpful.

48.1% If you do file a brief before oral argument, please do not wait until a few days before the argument, because it is likely that I have already given considerable thought to your case by then.

Add'l comment: Resetting an argument is difficult because by the time you get your 21-day notice letter, we are working on your case.

IV. ETHICS, PROFESSIONALISM, AND SANCTIONS

52. How often have you referred appellate counsel to the Office of General Counsel of the State Bar for violation of Disciplinary Rules?

3.8% More than twice.
23.8% Once or twice.
72.5% Never.

53. When a party moves for appellate sanctions under TRAP 45, does that affect your perception of the case?

13.2% Yes.
86.8% No.

Additional comments:

- No. Only do this if truly frivolous.

- Possibly.

54. In your experience, which of the following, if any, are increasing? (Please check all that apply.)

38.8% Failing to thoroughly research the issues presented on appeal.

Add'l comment: This is probably due to over reliance on computers and Westlaw. Lawyers generally are not critically reading the authority upon which they rely. Turn off your computer and actually read the cases and statutes in context.

16.4% Going outside the record.
46.3% Mischaracterizing or misstating the record or the law.

Add'l comment: Too many quotes out of context. You lose credibility.

44.8% Raising issues that clearly lack merit.
16.4% Making personal attacks on opponent.
43.3% Stating the facts in a manner that is inconsistent with the standard of review.

55. Does prior bad behavior or unethical conduct affect your perception of a brief or oral argument?

79.2% Yes.
20.8% No.

Additional comments:

- Being disbarred for heinous actions in the trial court may "affect" my perception. But, having a contentious trial (being zealous lawyer) which an opponent might view as "bad behavior," together with a lucid, cogent brief and argument would benefit appellate case.

- I will try not to hold it against your client, but, at a certain point, you lose the confidence of the court - it is bad advocacy.

V. MISCELLANEOUS

56. When should counsel advise the Court of a settlement or possible settlement?

48.7% As soon as there is any reasonable possibility the case will settle, so the Court will not work on the case unnecessarily.

Add'l comment: (Emphasis on <u>so the Court will not work on the case unnecessarily</u>). This happens often.

38.5% When the parties have reached a settlement in principle.
12.8% When the parties have finalized a settlement.

57. If a case is not set for submission for an unusually long time following completion of the briefing, what should the advocate do?

17.1% File a motion requesting submission.

Add'l comment: Motion better gets the judge's attention.

42.1% Send a polite letter to the clerk.
31.6% Telephone the clerk.
9.2% Nothing.

Additional comment: Is "unusually long" 2 months, or is it 2 years? What is "unusually long" depends on perception.

58. If the Court does not issue an opinion for an unusually long time following submission, what should the advocate do?

8.0% File a motion requesting a decision.

Add'l comment: But there is usually a good reason for the delay.

36.0% Send a polite letter to the clerk.
24.0% Telephone the clerk.
32.0% Nothing.

Add'l comment: Nothing, unless there are developments that affect the case and the timing of the decision.

59. How do you react when an opponent opposes a first motion for extension to file the brief?

12.0% I more closely scrutinize the reasons for the extension.
88.0% Our Court routinely grants the first motion for extension to file the brief, even if it is opposed.

60. If your Court refers a case to mediation and a party objects, does the objection affect your view of that party?

0.0% Yes.
10.7% Yes, if the party objects without offering a valid reason.
89.3% No.

Add'l comment: No. <u>NOT AT ALL</u>. But your objection is, so we can get it to submission.

61. If appellate jurisdiction is lacking, should the appellee file a motion to dismiss the appeal before the case is briefed?

9.3% Yes. We will always rule on a motion to dismiss before the appeal is briefed.
58.7% Yes. We decide most jurisdictional issues before briefing if they are called to our attention, although we sometimes carry the motion with the case.
28.0% Only if the jurisdictional defect is very clear. Otherwise, we normally carry the motion with the case.
4.0% No. Address the jurisdictional defect in your brief.

62. Which of the following best describes your view about selecting judges?

23.9% We should continue with our current system.
22.4% We should continue with our current system, except that judicial elections should be non-partisan.
28.3% Judges should always be appointed, but then required to run in regular elections or retention elections.
10.4% Judges should always be appointed; we should eliminate judicial elections.
14.9% No preference.

Additional comment: There is no real solution. Good and bad judges are elected and good and bad judges are appointed.

63. Additional advice/likes/dislikes.

- Very thorough.

- Some of these questions presented true Hobson's choices. Used nebulous or value-laden terms made exacting responses difficult.

- Avoid forceful argument citing what the advocate believes to be controlling authority that supposedly leaves the court no choice on the pending case.

- Most appellate practitioners know that intermediate appellate courts do not control the transfer of their cases but they still continue to complain about this treatment of their cases. Please remind them that the Supreme Court handles this and it is a direct result of the size of the courts' jurisdiction, population and caseload. Thanks.

- Great survey questions. Thanks for your efforts to educate both the bench and bar.

◘ Both sides need to make sure the entire record needed is before us. My experience with lawyers at the appellate level has been very positive. Most lawyers attempt to file briefs in a timely manner and present good arguments. Most of the questions above asked for criticisms of actions by lawyers, but in general I think the bar does a good job in appellate practice.

◘ Some questions were not answered because of the way they were phrased.

◘ Application of the standard and scope of review provides an often-overlooked opportunity for persuasion. If standard and scope are mentioned at all in a brief, they often are treated as stand-alone, boilerplate sections of the brief. Many advocates make little effort to shape their arguments according to the governing standard; instead, they pursue the My Cousin Vinny approach and contend, in so many words, that everything the other side said in its brief is just bull---- and is not worthy of belief. Not very effective. I pay more attention to the brief of an advocate who has the skill to acknowledge adverse evidence, or rulings, or law, and then explain why they are STILL entitled to prevail under the governing standard/scope of review.

◘ Don't use large block quotes.

◘ Be polite and don't treat opposing counsel or the judges like idiots.

◘ Always remember that you serve your client best by being helpful to the Court.

◘ Great idea to do this survey! Thanks.

◘ I think it was an excellent questionnaire. I would have changed a few of the questions, particularly when they used loaded terms like "increasing" with respect to bad behavior (Maybe bad behavior isn't increasing) or "if any," and then still required a response. ("None of the above" was not an option for a question asking "if any."). Also, some of the questions asked for the judge's preference when the court might have a policy that differs from that preference. For example, I like letters to the clerk on matters such as 'why haven't you ruled?', especially if an answer is critical. However, the court may have a different policy. Also, there was no option for "it depends" about such matters, which is the real answer.

◘ Lawyers should speak out more often about judicial independence and they should support reasonable proposals (either in the Legislature or to the public at large) to improve the administration of justice. They should support efforts to streamline litigation and to bring the courts into the modern technological era, through electronic filings both at the trial and appellate stages.