CONTEMPORARY APPELLATE ADVOCACY

Tenielle Fordyce-Ruff*

Most legal advocacy texts cover constructing the parts of an appellate or trial brief, persuasive writing techniques, and oral advocacy.[1] *Contemporary Appellate Advocacy* goes beyond the usual coverage. The text covers the science of persuasion, creating professional identity, discussion of professionalism and bias, formatting briefs for modern readers, and technology's evolving role in contemporary appellate practice. And it masterfully accomplishes this all in an easy-to-understand 300 pages.

Contemporary Appellate Advocacy by Ann Ching and David B. Gass speaks to how appellate law is practiced today. It sets out to "demystify the appellate process by providing a comprehensive guide to the art and practice of appellate advocacy."[2] Ching is a Clinical Professor of Law at Sandra Day O'Connor College of Law, Arizona State University; sits on the Board of Directors for the Association of Legal Writing Directors; and serves as a judge pro tempore for the East Valley Regional Veterans Court in Phoenix, Arizona.[3] She

*Associate Clinical Professor of Law and Director of JD Online Learning, Sandra Day O'Connor College of Law, Arizona State University; President of the Association of Legal Writing Directors; and series editor for Carolina Academic Press's legal research series.

1. *See, e.g.*, MARY BETH BEAZLEY, A PRACTICAL GUIDE TO APPELLATE ADVOCACY (6th ed. 2023); JOAN M. ROCKLIN ET AL., AN ADVOCATE PERSUADES (2d ed 2022).

2. ANN CHING & DAVID B. GASS, CONTEMPORARY APPELLATE ADVOCACY xvii (2025).

3. *See Ann Ching*, ARIZ. STATE UNIV., https://search.asu.edu/profile/3505398 (last visited Aug. 24, 2025) (click on Curriculum Vitae); Crystal Jimenez, *Ann Ching Elected to the Board of the Association of Legal Writing Directors*, ARIZ. STATE UNIV. SANDRA DAY O'CONNOR COLL. OF L. (June 18, 2025),

began her legal career in the U.S. Army, has served as Ethics Counsel for the State Bar of Arizona, and has taught legal writing for over a decade.[4] David B. Gass is the Chief Judge of the Arizona Court of Appeals, Division One; he was appointed to the bench in 2009, first serving as a trial judge in the Superior Court in Maricopa County, Arizona, before being appointed to the Arizona Court of Appeals in 2019.[5] Their experience allows them to create a book that is practical, modern, and engaging for both students and practicing lawyers.

The book is divided into five parts: Introduction to Appellate Advocacy, Constructing Appellate Briefs, A Contemporary Advocate's Guide to Persuasion, Oral Argument: Strategies for Success, and Special Considerations (including legal technology, moot court, and clerkships).[6] Each chapter begins with learning outcomes for the topic covered and ends with discussion questions. Thus, even for chapters with an eye more toward attorneys, the discussion questions provide an avenue for robust classroom discussions. The book also strategically employs lists and graphs to make dense information easy to understand, accessible, and engaging for the reader. Throughout, the text focuses on attorneys as people and being a competent advocate, not just the nuts and bolts of writing a brief and presenting an oral argument.

The text offers practical advice based on real world examples throughout. While many texts provide excerpts

---

https://law.asu.edu/newsroom/ann-ching-elected-board-association-legal-writing-directors.

4. *See Ann Ching*, ARIZ. STATE UNIV., https://search.asu.edu/profile/3505398 (last visited Aug. 24, 2025) (click on Curriculum Vitae); Crystal Jimenez, *Ann Ching Elected to the Board of the Association of Legal Writing Directors*, ARIZ. STATE UNIV. SANDRA DAY O'CONNOR COLL. L. (June 18, 2025), https://law.asu.edu/newsroom/ann-ching-elected-board-association-legal-writing-directors.

5. *See David B. Gass*, ARIZONA COURT OF APPEALS, DIVISION ONE, https://coa1.azcourts.gov/Court-Information/Judges/David-B-Gass (last visited Aug. 24, 2025).

6. CHING & GASS, *supra* note 2, at xix. The teacher's manual provides two sample syllabi to show examples of the order of assigning various chapters during an appellate advocacy course.

of well written briefs, the authors go beyond the written product to give the reader sage advice about the appellate practice itself. For instance, when covering appellate motion practice, the authors provide standards from the Ninth Circuit, state of Nevada, and state of Wisconsin to illustrate to the reader how different courts approach motions to stay action in the trial court during the appeal.[7] The authors also follow their guidance on persuasive writing; they use a professional but conversational tone to help readers understand their message.[8] And the authors weave tips about technological advances throughout in addition to including an entire chapter to technology's evolving role in practice. The entire approach the authors take is refreshing and makes the book an excellent reference for attorneys new to appellate practice as well as any attorney who wants to improve their practice, or law students who want to learn more about appellate practice.

The book begins at the beginning:[9] Part 1 covers an "Introduction to Contemporary Appellate Practice." The three chapters in this part provide both the practical and theoretical underpinnings necessary for an attorney to successfully advocate at the appellate level. Many texts on advocacy in general and appellate advocacy do not cover these topics at all or cover them without the depth and thoughtful presentation Ching and Gass provide.[10]

Chapter 1 is an "Overview of Appellate Practice in the United States." This chapter covers how to succeed as an appellate attorney, appellate practice in federal courts, appellate practice in state and tribal courts, and appeals in administrative actions. Yet, from the beginning of this chapter, this book is different from

---

7. *Id.* at 37–38.

8. *See id.* at 185–86 (noting that communicating simply and fluently, with a conversational tone helps the reader stay relaxed and open to the message in the writing).

9. "Begin at the beginning," the King said gravely, "and go on till you come to the end: then stop." LEWIS CARROLL, ALICE'S ADVENTURES IN WONDERLAND 182 (1869).

10. *See, e.g.*, BEAZLEY, *supra* note 1; ROCKLIN ET AL., *supra* note 1.

other texts. In its list of fundamental skills necessary to succeed as an appellate advocate, "[m]aintaining emotional and physical well-being" is included.[11] We know that law students leave law school with greater rates of substance abuse, anxiety, and depression than the rest of the population and brutal work-life balance.[12] So encouraging healthy practices is refreshing and can only help students to carry better practice into their careers. Moreover, the authors take the time to meaningfully address appeals in tribal courts. They note that the complex nature of practicing in tribal courts "presents rewarding opportunities for appellate advocates."[13] Likewise, the authors cover opportunities for appellate practice before administrative agencies.[14]

Chapter 2, "Navigating the Appellate Process," provides a general overview of how the appeals process works. It begins with the prudent caution that details matter, and every jurisdiction has rules governing its own process and that understanding those rules is the first job of an appellate attorney.[15] It continues to offer practical advice and guidance. For instance, while practice attorneys are likely aware of the resources state bars provide to its members, students might not think to access those for guidance. It also covers the mechanics of an appeal, types of appeals, and appellate motion practice. It cautions the reader to understand how anything from minor mistakes to purposefully ignoring court requirements can have grave consequences.[16] In addition to practical advice, this chapter makes complex topics like appellate jurisdiction accessible. For example, it notes that appellate jurisdiction "generally turns on four things: (1) what type of case it is, (2) where the case

11. CHING & GASS, *supra* note 2, at 4.

12. Jason G. Dykstra, *Teaching the Arc of Electric Spark: Igniting Curiosity, Creativity, and Innovation Throughout the Law School Curriculum*, 45 N. ILL. U. L. REV. 194, 209–10 (2025).

13. CHING & GASS, *supra* note 2, at 13.

14. *Id.* at 13–14.

15. *Id.* at 18–20.

16. *Id.* at 23–26.

originated, (3) what order the appellant is appealing, and (4) when the order became appealable."[17] This is perhaps the best summary of appellate jurisdiction I've seen provided. The authors go on to provide helpful guidance on when courts are likely to grant discretionary appeals and the most common types of appellate motions.[18]

Chapter 3, "Ethics and Professionalism in Appellate Advocacy," covers the expected topics of the ethical issues appellate practitioners face but also provides an entire section on bias and cross-cultural competency and on creating professional identity. The chapter nicely breaks down frequently encountered issues faced when dealing with clients, identifying claims, writing briefs, and presenting oral arguments. This common-sense breakdown makes it an easy reference for attorneys seeking guidance on how to approach ethical issues. Where this chapter shines brightest, though, is in the way it tackles head on that attorneys must have cross-cultural competence not just to practice ethically, but to achieve job satisfaction.[19]

After introducing the fundamentals to appellate practice, the book turns to Part 2: "Building Appellate Arguments and Drafting Appellate Briefs." While many of the topics in this part are covered by other texts, the authors include less-common topics and chapters in this section. Chapter 4, for instance, covers preserving the record for appeal with helpful and practical advice aimed at trial attorneys to use from pre-trial motions, the trials themselves, and post-trial motions.[20] The authors then delve into standards of review.[21] The most interesting discussion in this chapter, however, is about how technology affects preserving issues. The authors sagely advise trial attorneys to ensure all teleconferences and email communications are in the record.[22]

---

17. *Id.* at 27.
18. *Id.* at 28–43.
19. *Id.* at 58–59.
20. *Id.* at 65–70.
21. *Id.* at 73–82.
22. *Id.* at 68.

Chapter 5, "Crafting Compelling Arguments," addresses how to "identify, organize, and structure" the heart of the appellate brief.[23] While many appellate advocacy texts cover organizing and constructing arguments, the authors also delve into selecting arguments and the most common procedural arguments (with a handy chart).[24] They also give great advice on strategic organization and making roadmaps and point headings work together,[25] and on constructing the most common forms of legal arguments. This breakdown of analogical, rule-based, statutory interpretation, policy-based, and empirical arguments moves beyond the standard IRAC/CREAC organization by providing specific, easy-to-apply guidance on how to construct the most persuasive argument based on its type.[26] But this chapter really shines at the end by addressing the most common logical fallacies attorneys make and tips for avoiding those. For instance, the authors define common logical errors such as hasty generalizations, false dichotomies, and circular reasoning, and then provide ways to identify those in your opponent's argument and to avoid them in your own.[27] The chapter then ends with an exercise to help identify fallacies.[28]

Chapter 6 covers drafting the other parts of an appellate brief. Here, the authors infuse this chapter with discussion of how the various parts of the brief fit into the persuasive whole. For instance, they note that sloppy tables of contents and authorities can influence the judges' perception about the quality of the argument.[29] Likewise, the presentation of point headings in the table of contents "represents the lawyer's first real

23. *Id.* at 83.

24. *Id.* at 84–87.

25. *Id.* at 87–94.

26. *Id.* at 95–110.

27. *Id.* at 110–15.

28. *Id.* at 115. While not as in depth as the discussion in RUGGERO J. ALDISERT, LOGIC FOR LAWYERS: A GUIDE TO CLEAR LEGAL THINKING 137–224 (1997), the authors' distillation is much more approachable for students.

29. CHING & GASS, *supra* note 2, at 118.

opportunity at persuasion."[30] For the more substantive portions of the brief, like the introduction, statement of the case, summary of the argument, and the conclusion, the authors weave in nuggets about persuasive techniques that they cover in depth in Part 3 of the book.[31] And for each section of the brief, the authors provide lists of drafting advice. But the most striking part of this chapter is the frank and pithy advice about how judges and their staff read briefs. In one of my favorite sentences in the book, they note "[l]aw clerks have been known to take certain joy in finding [errors in the Statement of Facts], particularly when they are dispositive."[32]

This book again distinguishes itself in Chapter 7, "Formatting Brief for the Modern Reader." While other texts cover the content of briefs and the need to follow formatting rules,[33] the authors here include advice on formatting briefs for both electronic and hard copies and ways to increase a brief's listenability for text-to-speech. Their advice is grounded in the sound principle that reducing cognitive load by making briefs easy to read makes them more persuasive and that most readers today will read on a screen.[34] As with other chapters that link good writing to persuasion, the authors here end with the reminder that "it's possible to use a handful of intersecting and overlapping techniques to produce writing that is readable, listenable, and persuasive."[35] They include a fascinating discussion on typeface, then advise writers to choose a "conventional, proportionally spaced serif" font, and for authors to "be better known for the quality of your writing than the creativity of your typeface."[36] They also note that the judicious use of white

30. *Id.* at 119.

31. *Id.* at 121–22, 127–33.

32. *Id.* at 127.

33. *See, e.g.*, BEAZLEY, *supra* note 1, at 173–94; ROCKLIN ET AL., *supra* note 1, at 247–72.

34. CHING & GASS, *supra* note 2, at 138.

35. *Id.* at 147.

36. *Id.* at 140.

space creates advantages for screen reading, balances the text, and draws the reader's attention, and that modern practice favors readability in formatting point headings.[37] Another helpful nugget of advice is to include demonstrative images (like charts and bulleted lists) in your brief to both decrease length and increase readability.[38] Finally, the authors note that text-to-speech quality is quickly improving and that AI is only increasing the probability that judges will listen to briefs.[39] They then provide a list of easy to implement techniques to improve both persuasion and listenability in briefs.[40] Having this advice easily accessible in a single, short chapter creates a huge benefit for both students and busy practitioners.

Part 3, "A Contemporary Advocate's Guide to Persuasive Writing," is where this text truly stands out, however. It kicks off with the fundamentals of good legal writing in Chapter 8, which covers the writing process; writing accurately, clearly, and concisely; using a professional tone; and avoiding plagiarism. The authors use a professional but friendly tone, provide great advice, and use visuals to make the text more pleasing. They highlight why the advice works so well for advocacy. For instance, in the section on writing clearly, the authors delve into readability and provide revisions set apart from the text in lists to highlight how a more natural sounding sentence construction can increase readability and persuasion.[41] They also do a masterful job of incorporating their advice about developing professional identity from Chapter 3 by covering tips on avoiding both unintentional and intentional bias in writing.[42]

Chapter 9, "The Science of Persuasion: Modern Theories and Strategies," forms the backbone of the text. The sheer amount of excellent and helpful information

37. *Id.* at 141–42.
38. *Id.* at 141, 144.
39. *Id.* at 146.
40. *Id.* at 146–47.
41. *See id.* at 160–61.
42. *Id.* at 170–71.

provided in this short chapter astounds me. It introduces persuasive writing not through specific techniques but through the interactive process of persuasion, drawing on "disciplines ranging from psychology to economics."[43] The authors first introduce the interconnected persuasive process: the advocate, decision-maker, message, and context.[44] They discuss the intersection of the likeability, credibility, and authority of the author as integral to persuasion.[45] Helpfully, they provide easy to follow tips to increasing authority and likeability, and these tips overlap with the formation of a professional identity.[46]

The chapter then delves into how decision-makers process information.[47] This discussion begins with an explanation of fast and slow thinking and how we are more likely to trust decisions that we can make easily.[48] It then goes over mental shortcuts and cognitive biases, noting that everything we write matters and "[h]ow you present choices will influence how a decision-maker will think about them."[49] It also explores cognitive load and decision fatigue and ends the discussion of processing information with three conclusions about ways to present information to influence decision-makers and three tips to persuade the decision-maker.[50] The authors note how a conversational tone helps reduce a reader's cognitive load,[51] and notes that research shows "readers actually perceive an author to be *less* intelligent if their writing is difficult to understand."[52] They then circle back to their advice about white space from Chapter 8, cautioning writers to avoid block quotes and string

43. *Id.* at 176.
44. *Id.* at 176–96.
45. *Id.* at 177–81.
46. *Id.* at 180–81.
47. *Id.* at 181–88.
48. *Id.* at 182.
49. *Id.* at 183–84
50. *Id.* at 185–88.
51. *Id.* at 185.
52. *Id.* at 186.

citations.[53] When discussing the message itself, the authors present tried and true methods of persuasive writing, yet they caution writers to "examine the theories behind" why techniques work in the context of what we know about decision-makers.[54] They also remind the readers of the ethical boundaries of using persuasive techniques.[55] Finally, in a large departure from most advocacy texts, the authors note how context surrounds every part of persuasion and that writers "should consider the moral, economic, social, and political context of the decision [on formulating the appeal]."[56]

The book then moves into "Advanced Persuasive Writing Techniques" in Chapter 10. This chapter explores the 3-P paradigm to write persuasively and ways to harness storytelling. Noting that the "foundation of persuasive writing is *good* writing[,]" the authors recommend using Perspective, Perception, and Position to make writing more persuasive.[57] Each section of this chapter ends with an exercise designed to help students employ a single technique in their writing. When discussing how to craft rules from the client's perspective, they provide a chart with common rule structures and another with examples for broadly and narrowly framed rules.[58] The discussion on perception—choosing words based on the reader's perception of their meaning—employs vivid examples and a brilliant discussion of why "elegant variation" can create headaches in legal writing.[59] Finally, when discussing position, the authors explain how the primacy effect works, so legal writers understand why they want to exploit positions of emphasis and use short paragraphs.[60] This chapter then explores the power of

53. *Id.* at 187.
54. *Id.* at 189.
55. *Id.* at 192.
56. *Id.* at 195.
57. *Id.* at 200.
58. *Id.* at 201–06.
59. *Id.* at 203–04.
60. *Id.* at 205–06.

storytelling, walking through story components. Once again, the authors ground their advice by discussing the story bias and how having a strong theme, conflict, and archetype help the reader process new information.[61]

Part 4: "Oral Argument in the Modern Era," consists of a single chapter on mastering oral argument. This chapter does an excellent job of balancing oral arguments in practice with teaching students about the art and science of presenting oral arguments. It starts with a focus on the practice, such as when to request or waive oral arguments.[62] It turns then to the science behind effective oral arguments, explaining how the exposure effect, the proximity principle, and paralinguistic cues work in an advocate's favor during arguments.[63] But it also reminds the reader about early discussions in the book, noting that appearing confident is rooted in social norms and influenced by race, class, and gender.[64] It moves then to the expected discussion of preparing for oral arguments, both logistically and substantively.[65]

The book shines, however, in its discussion of preparing for virtual and hybrid arguments. The authors offer great tips to help an advocate prepare for a virtual presentation, going through court expectations, video and audio considerations, and modifying presentation style to still take advantage of the science behind effective oral arguments.[66] The section on presenting your best self during oral argument is also outstanding for its frank discussion of authenticity, and the section on dealing with challenges offers excellent advice about seeking help to deal with extreme anxiety and addressing bias in the courtroom.[67] Like prior chapters, the authors no-nonsense advice and willingness to

61. *Id.* at 208–12.
62. *Id.* at 220–21.
63. *Id.* at 221–22.
64. *Id.* at 222.
65. *Id.* at 223–31.
66. *Id.* at 232–38.
67. *Id.* at 238–43.

address culture and bias is refreshing and needed in a text. This chapter offers many gems to both help students, professors, and practitioners; my favorite is to take improvisation classes to improve both listening and speaking.[68]

The final part of the book: "Special Considerations in Modern Appellate Advocacy," starts by addressing the use of technology in appellate practice in Chapter 12. Rather than focusing on specific tools, though, the authors focus on the ethical and strategic use of technology, providing "concepts and guidelines to incorporate technology into . . . legal practice."[69] In their discussion on using technology, they focus on meeting the ethical and competency obligations all attorneys have.[70] They offer a robust discussion on selecting technology to use in practice, noting "[f]irst, you must exercise competence and diligence in vetting and engaging legal tech providers. Second, you must ensure that you and those you work with understand how to use technology properly to avoid ethical violations, especially regarding confidential information."[71] They then tackle using analytics to guard against bias and track trends.[72] In addition to providing an overview and how to incorporate analytics into an appellate practice, the authors note how new graduates can distinguish themselves by using analytics.[73] Shifting to the section on using AI in legal practice, the authors cheekily provide the reasons that ChatGPT provided for teaching law students to use generative AI.[74] They end the chapter with best practices to guide the use of AI in practice.[75]

---

68. *Id.* at 240.
69. *Id.* at 268.
70. *Id.* at 248–49.
71. *Id.* at 251.
72. *Id.* at 252–57.
73. *Id.* at 253.
74. *Id.* at 258–59.
75. *Id.* at 266–67.

The final chapter in the book, "Appellate Advocacy in Other Contexts: Moot Court, Clerkships, and Pro Bono Advocacy," provides helpful and specific advice for students and attorneys. While covering moot court arguments is common in textbooks, the authors here go into the specifics of moot court competitions, offer advice for students who want to compete, and offer advice for coaching moot court teams.[76] Near to my first-generation-student heart, the authors cover preparing and applying for a clerkship, encouraging students who are interested in clerkships to "[b]elieve in yourself and apply."[77] Finally, the authors address gaining experience as an appellate attorney through representing pro bono clients, including ways to find those clients.[78]

With its thoughtful coverage of the science of persuasion, creating professional identity, professionalism and bias, formatting briefs for modern readers, and technology's evolving role in contemporary appellate practice, this book should be a go-to guide for attorneys. And with its refreshing approach of weaving the best writing practices into the text itself, it serves as a wonderful text to use in any appellate advocacy course.

76. *Id.* at 270–77.
77. *Id.* at 277.
78. *Id.* at 285–87.