

Table of Contents

CHAPTER 1. APPELLATE COURTS AND THEIR INTERNAL PROCESSES

I. LOUISIANA SUPREME COURT

- § 1:1 Jurisdiction of court
- § 1:2 —Original jurisdiction
- § 1:3 — —Discipline of attorneys
- § 1:4 — — —Governing rules
- § 1:5 — —Discipline of judges
- § 1:6 —Appellate jurisdiction
- § 1:7 — —Review of laws or rules declared unconstitutional
- § 1:8 — —A trial court decision on order of Public Service Commission
- § 1:9 —Supervisory jurisdiction
- § 1:10 — —Issuance of writs
- § 1:11 — —Instructions on certified questions of law
- § 1:12 —Additional Supreme Court jurisdiction
- § 1:13 —Rulemaking
- § 1:14 —Assignment of judges
- § 1:15 Personnel of the court
- § 1:16 —Justices of the court
- § 1:17 — —Chief Justice
- § 1:18 — —Associate justices
- § 1:19 — —Qualifications to serve as a justice
- § 1:20 — —Election and term of justices
- § 1:21 — —Districts
- § 1:22 —Staff of the Court
- § 1:23 — —Clerk of the Court
- § 1:24 — —Office of Judicial Administrator
- § 1:25 — —Central and Civil Staffs
- § 1:26 — —Law clerks
- § 1:27 — —Bailiff
- § 1:28 — —State Law Librarian
- § 1:29 — —Judicial Council
- § 1:30 Processing of appeals and writs
- § 1:31 —Appeals of right
- § 1:32 —Consideration and processing of writ applications
- § 1:33 — —Responding to an application for certiorari
- § 1:34 — —Voting on applications for certiorari

- § 1:35 — —Factors supporting writ grants by the Supreme Court
- § 1:36 — —Rehearing and reconsideration of writ application
- § 1:37 —Emergency writ applications and stay orders
- § 1:38 —Scheduling of argument
- § 1:39 —Selection of opinion author
- § 1:40 —Post-argument conferences
- § 1:41 —Sitting cycles; writing of opinions

II. COURTS OF APPEAL

- § 1:42 Jurisdiction
- § 1:43 —Justiciable controversy
- § 1:44 —Appellate
- § 1:45 — —Administrative determinations involving ethics
- § 1:46 — —Review of law and fact
- § 1:47 —Supervisory
- § 1:48 —Rulemaking
- § 1:49 Divisions of courts
- § 1:50 —Composition of circuits
- § 1:51 Panels
- § 1:52 —Appeal panels
- § 1:53 — —Drawing of panel members
- § 1:54 —Writ panels
- § 1:55 Court personnel
- § 1:56 —Judges
- § 1:57 — —Term of office; Chief Judge
- § 1:58 —Staff
- § 1:59 —Clerks of court
- § 1:60 —Central staff
- § 1:61 —Law clerks
- § 1:62 —Bailiffs
- § 1:63 Email notification
- § 1:64 Processing of appeals and writs
- § 1:65 —Notice of appeal
- § 1:66 Appeals from decision of board of ethics
- § 1:67 Processing of appeals and writs—Lodging of appeal and assignment of docket number
- § 1:68 —Briefs
- § 1:69 —Staff screening
- § 1:70 — —Handling of apparent grounds for dismissal
- § 1:71 — —Screening for weight or complexity and for summary docket
- § 1:72 — — —First Circuit
- § 1:73 — — —Third Circuit

TABLE OF CONTENTS

§ 1:74	— — —Fourth Circuit
§ 1:75	— — —Fifth Circuit
§ 1:76	—Assignment of cases to panels and identity of panel members
§ 1:77	—Preargument research
§ 1:78	—Judges’ conferences on oral argument
§ 1:79	—Selection of opinion author
§ 1:80	— —Effect of remand
§ 1:81	—Opinion preparation
§ 1:82	—Opinion conference
§ 1:83	—Sitting cycles—Sitting time
§ 1:84	— —Writing time
§ 1:85	— —Reviewing time
§ 1:86	— —Final editing and concurrence or dissent preparation time
§ 1:87	— —Opinion day
§ 1:88	—Applications for rehearing of appeal decision
§ 1:89	—Applications for writs
§ 1:90	— —Time limits
§ 1:91	—Application for rehearing of writ decision
§ 1:92	Electronic filing
§ 1:93	Processing of appeals and writs—Volume in the appellate courts

CHAPTER 2. PRELIMINARY CONSIDERATIONS

I. ACCEPTING AN APPELLATE CASE

§ 2:1	Conflicts of interest
§ 2:2	—Disqualification of attorney
§ 2:3	—Disqualification of firm and members of firm
§ 2:4	Decision to appeal or seek writ
§ 2:5	—Grounds for appeal or issuance of writ
§ 2:6	—Whether error properly raised and preserved
§ 2:7	— —Examples of matters to which objections must be raised at trial or be waived
§ 2:8	— —Examples of matters to which objections not raised at trial but not waived
§ 2:9	— —Exceptions
§ 2:10	— —Acceptance of judgment
§ 2:11	—Merits of case
§ 2:12	—Client’s objective
§ 2:13	—Potential for success
§ 2:14	—Client’s financial condition

- § 2:15 —Delay
- § 2:16 —Psychological factors
- § 2:17 —Settlement
- § 2:18 Determining who should handle the appeal: Trial
counsel or new appellate counsel
- § 2:19 —Withdrawal and substitution
- § 2:20 — —Motion to withdraw
- § 2:21 — —Substitution of counsel

II. ALTERNATIVES OR PRELIMINARIES TO APPEALING OR SEEKING WRIT

- § 2:22 Exhausting alternative remedies

III. FEE AGREEMENTS

- § 2:23 Representation on appeal

CHAPTER 3. INITIATING REVIEW OF TRIAL COURT DECISION

I. INTRODUCTION

- § 3:1 General information

II. WHERE TO SEEK REVIEW

- § 3:2 Courts of appeal
- § 3:3 Supreme Court
- § 3:4 —Rulings not subject to Supreme Court review
- § 3:5 Appeals from courts of limited jurisdiction

III. WHO MAY SEEK REVIEW

- § 3:6 Parties
- § 3:7 —Effect of substitutions
- § 3:8 —Effect of confession of judgment
- § 3:9 — —Illustrations
- § 3:10 —Effect of consolidation of actions
- § 3:11 Legal representatives
- § 3:12 Persons who could have intervened in trial court
- § 3:13 Persons with no interest or right in appealing

IV. APPEAL AS MATTER OF RIGHT

- § 3:14 Final judgments
- § 3:15 —Decretal language

TABLE OF CONTENTS

§ 3:16	— —Illustrations
§ 3:17	—Dismissal for premature appeal
§ 3:18	— —While motion pending
§ 3:19	— —Illustrations
§ 3:20	—Dismissal of appeals from nonappealable judgments
§ 3:21	— —Illustrations
§ 3:22	Partial new trials
§ 3:23	Final and interlocutory judgments
§ 3:24	—Dismissal of some, but not all, plaintiffs, defendants, or interveners
§ 3:25	—Grant of motion for judgment on the pleadings or for summary judgment
§ 3:26	—Grant of motion for judgment on the pleadings or for summary judgment—Agreement between parties to consider partial summary judgments as final
§ 3:27	—Grant of motion for judgment on the pleadings or for summary judgment—Illustrations of final judgment
§ 3:28	— —Illustrations of no final judgment
§ 3:29	—Judgment on separately tried principal or incidental demand
§ 3:30	—Judgment on separately tried issue of liability
§ 3:31	Partial final judgments—Judgment on separately tried issue of liability—Damages
§ 3:32	Final and interlocutory judgments—Interlocutory judgments that may cause irreparable injury
§ 3:33	— —What constitutes irreparable injury
§ 3:34	— —Illustrations
§ 3:35	Appealability of particular judgments
§ 3:36	—Interlocutory judgments in general
§ 3:37	— —Supreme Court review
§ 3:38	—Executory process
§ 3:39	—Motions for summary judgment and judgment on the pleadings
§ 3:40	—Injunctions
§ 3:41	—Temporary restraining order
§ 3:42	—“Costs” judgments
§ 3:43	—Declaratory judgment
§ 3:44	—Order on motion for new trial
§ 3:45	— —Examples
§ 3:46	—Family law decrees
§ 3:47	— —Deprivation of parental rights
§ 3:48	— —Juvenile court decrees
§ 3:49	— —Disposition of property
§ 3:50	—Actions by or against state in connection with contracts

- § 3:51 —Expropriation proceedings
- § 3:52 —Default judgments
- § 3:53 —Worker’s compensation reviews
- § 3:54 — —Overview of changes in processing worker’s
compensation litigation
- § 3:55 —Unemployment compensation reviews
- § 3:56 —Civil service commission
- § 3:57 —Interdiction proceedings
- § 3:58 —Judicial commitment
- § 3:59 —Consent judgments
- § 3:60 Finality as to parties
- § 3:61 —Illustrations

V. DISCRETIONARY REVIEW BY WRIT

- § 3:62 Types of writ available
- § 3:63 Supervisory writs
- § 3:64 Writs of certiorari
- § 3:65 —Application for writ of certiorari
- § 3:66 — —Form of application
- § 3:67 — —Time period for seeking certiorari
- § 3:68 — —Contents of application
- § 3:69 —Election cases
- § 3:70 Effect of denial of writ

VI. PROCEDURE FOR INITIATING APPEAL

- § 3:71 Incorrectly designated applications
- § 3:72 Time periods for appeal
- § 3:73 —Suspensive or devolutive appeals
- § 3:74 — —Failure to timely file appeal
- § 3:75 — —Shortened delay periods for particular appeals
- § 3:76 — —Exceptions to 30- and 60-day rules
- § 3:77 — —Illustrations
- § 3:78 —Effect of post-judgment motions
- § 3:79 Order of appeal
- § 3:80 —Contents of written motion or petition
- § 3:81 —Appeal by multiple parties
- § 3:82 —Amendment of petition
- § 3:83 —Security
- § 3:84 Costs and fees
- § 3:85 Order of appeal—Problems with and consequences
- § 3:86 Filing appellate bond
- § 3:87 —Illustrations
- § 3:88 Special provisions for *in forma pauperis* appeals

TABLE OF CONTENTS

- § 3:89 —Procedure for invoking right to proceed *in forma pauperis*
- § 3:90 —Right to devolutive appeal but not to suspensive appeal
- § 3:91 —Responsibility for costs if appeal lost
- § 3:92 Procedure for initiating appeal from decision of administrative body
- § 3:93 Guidelines for post-trial procedure

VII. FORMS

- § 3:94 Form—Petition and order for appeal—By Defendant
- § 3:95 — —By Plaintiff
- § 3:96 — —Exception of prescription
- § 3:97 — —Grant of summary judgment motion for defendant
- § 3:98 — —Local administrative agency decision
- § 3:99 —Petition for appeal of administrative decision and request for stay order
- § 3:100 —Petition for appeal via trial de novo
- § 3:101 —Ex parte petition and order for formal appeal (from denial of preliminary injunction/suspensive appeal) and for order from district court
- § 3:102 —Petition and order for appeal—Litigation without prior payment of costs pursuant to La. C.C.P. article 5181
- § 3:103 —Petition for devolutive appeal and injunctive relief in connection with denial of liquor permit
- § 3:104 —Petition from the decision of parish council, petition for declaratory judgment, injunctive relief, mandamus relief and damage
- § 3:105 Notice of intent to apply for rehearing on grant of supervisory writ
- § 3:106 Form—Written motion and order for appeal
- § 3:107 —Notice of appeal
- § 3:108 — —Another form

CHAPTER 4. RESPONDING TO APPEAL

I. INTRODUCTION

- § 4:1 Appellee's concerns
- § 4:2 —Where appeal by losing party
- § 4:3 —Where appeal by prevailing party
- § 4:4 Appellee's obligations
- § 4:5 Appellee's options

- § 4:6 Seeking involuntary dismissal
- § 4:7 —Grounds for involuntary dismissal
- § 4:8 — —Technicalities as ground for dismissal

II. ANSWER TO APPEAL

- § 4:9 Overview
- § 4:10 Necessity of filing
- § 4:11 Contents of answer
- § 4:12 Time for filing
- § 4:13 Illustrations of procedurally sufficient and insufficient answers
- § 4:14 Order of appeal, costs, and bond
- § 4:15 Risks of not answering an appeal
- § 4:16 Risks of answering
- § 4:17 Supplemental answers
- § 4:18 Effect of answer on nonappealing parties
- § 4:19 Effect of one party applying for writs

III. FORMS

- § 4:20 Form Answer to appeal

CHAPTER 5. EFFECT OF APPEAL ON TRIAL COURT’S JURISDICTION

I. TRIAL COURT’S JURISDICTION BEFORE APPEAL TAKEN OR WRIT GRANTED

- § 5:1 General principles
- § 5:2 —Reconsideration of decision
- § 5:3 —Enforcement of judgment
- § 5:4 —Authority of appellate court

II. TRIAL COURT’S JURISDICTION AFTER APPEAL TAKEN OR WRIT GRANTED

- § 5:5 Overview of jurisdiction
- § 5:6 —Effect of type of review
- § 5:7 — —Devolutive appeal
- § 5:8 — —Suspensive appeal
- § 5:9 — —Application for writ
- § 5:10 —Effect of scope of appeal
- § 5:11 — —Partial appeals
- § 5:12 — —Appeals of partial judgment
- § 5:13 —Continuing jurisdiction

TABLE OF CONTENTS

- § 5:14 — —Questions concerning surety and appeal bond
- § 5:15 — —Return day
- § 5:16 — —Costs and fees
- § 5:17 — —Certifying judgment; providing proper decretal language
- § 5:18 — —Amount of interest owed
- § 5:19 — —Wage garnishments
- § 5:20 — —Illustrations

III. STAY OF TRIAL COURT

- § 5:21 Types of suspension
- § 5:22 — —Suspension of execution of judgment
- § 5:23 — —Effect of devolutive appeal on execution
- § 5:24 — —Execution of judgments during the second level of review
- § 5:25 — —Suspension of injunctive relief
- § 5:26 — —Suspension of eviction
- § 5:27 — —Other types of suspension
- § 5:28 Automatic stay
- § 5:29 — —Partial stays
- § 5:30 Bond for suspensive appeal
- § 5:31 — —Amount of bond
- § 5:32 — —Parties excused from requirement
- § 5:33 — —Cost bond
- § 5:34 — —Security other than bond
- § 5:35 — —Obligee on bond
- § 5:36 — —Application for new bond
- § 5:37 Surety on bond
- § 5:38 — —Commercial sureties
- § 5:39 — —Individual sureties
- § 5:40 — —Recovery against surety
- § 5:41 — —Exhausting collection from judgment debtor
- § 5:42 Failure to pay suspensive appeal bond
- § 5:43 Surety on bond—Exoneration of surety
- § 5:44 Termination of stay
- § 5:45 Recovery of bond expense as cost of appeal

IV. STAY OF TRIAL COURT

- § 5:46 Money judgment

V. FORMS

- § 5:47 Form—Suspensive appeal bond
- § 5:48 — —Rule to revoke order of appeal because of insufficiency of bond

- § 5:49 — —Order requiring new appeal bond
- § 5:50 — —Motion and order to extend return day
- § 5:51 Forms—Motion for suspensive appeal pursuant to article 4735

CHAPTER 6. THE RECORD ON APPEAL

I. INTRODUCTION

- § 6:1 Significance
- § 6:2 General considerations

II. PREPARING TRIAL RECORD

- § 6:3 Estimated cost of preparing record
- § 6:4 — —Contesting estimate
- § 6:5 — —Actual costs
- § 6:6 — —Effect of nonpayment
- § 6:7 Content and form of record
- § 6:8 — —On direct appeal to Supreme Court
- § 6:9 — —On Supreme Court's grant of writ to review appellate court action
- § 6:10 — —On appeal to appellate court
- § 6:11 — — —Matters that need not be included
- § 6:12 — — —Consolidated cases
- § 6:13 — — —Exhibits
- § 6:14 — — —Appealing summary judgments
- § 6:15 — — — —Illustrations
- § 6:16 — — —Prescription
- § 6:17 — — —Child support
- § 6:18 — — —First Circuit
- § 6:19 — — —Electronic audio and video evidence
- § 6:20 — — —Hearsay affidavits

III. DESIGNATING RECORD

- § 6:21 Appellant's designation
- § 6:22 Statement of points relied on
- § 6:23 — —Illustrations
- § 6:24 Stipulation as to record

IV. TRANSCRIPT AND NARRATIVE OF FACTS

- § 6:25 Obtaining trial transcript
- § 6:26 Stipulated narrative
- § 6:27 Trial court's narrative

TABLE OF CONTENTS

- § 6:28 Making record to defend appeal on default judgment
- § 6:29 —Illustrations
- § 6:30 Lost or unavailable trial transcript

V. LODGING RECORD IN COURT OF APPEALS

- § 6:31 Setting date record to be lodged
- § 6:32 Preparation of the record

VI. SUPPLEMENTING OR CORRECTING RECORD

- § 6:33 Permissibility
- § 6:34 How made
- § 6:35 —Concurrent jurisdiction of district and appellate courts to correct record
- § 6:36 —Hearing
- § 6:37 When made
- § 6:38 Scope of corrections
- § 6:39 Issues other than corrections

VII. WITHDRAWING RECORD

- § 6:40 On case before Supreme Court
- § 6:41 On case before court of appeals

VIII. DISMISSAL OF APPEAL

- § 6:42 Incomplete or erroneous record
- § 6:43 Lack of record
- § 6:44 —Timeliness
- § 6:45 —Presumption that missing transcript or statement would support judgment
- § 6:46 —Illustrations

IX. FORMS

- § 6:47 Form—Designation of contents of record
- § 6:48 —Appellee's cross-designation of contents of record
- § 6:49 —Parties' narrative of facts—Sample automobile collision case
- § 6:50 —Trial judge's narrative of facts
- § 6:51 —Memorandum in support of motion to dismiss motion for suspensive appeal for abandonment

CHAPTER 7. MOTIONS AND EXCEPTIONS

I. MOTIONS

- § 7:1 Overview

- § 7:2 —Where motions required
- § 7:3 —Rules governing motions
- § 7:4 Types of motions
- § 7:5 —Motions provided for by rule or statute
- § 7:6 —Motions provided by rule or statute—Motions to
dismiss appeal
- § 7:7 —Motions not specifically provided for
- § 7:8 —Motions to be raised only in trial court
- § 7:9 Initiating motions
- § 7:10 —Oral motions
- § 7:11 —Written motions
- § 7:12 — —Form and content of motion
- § 7:13 — — —Date of judgment
- § 7:14 — —Filing and service requirements
- § 7:15 Oral argument
- § 7:16 Briefs in support or opposition
- § 7:17 Ruling on motion
- § 7:18 Joint motions to dismiss appeal

II. EXCEPTIONS

- § 7:19 Overview
- § 7:20 Grounds for exception
- § 7:21 —No cause of action
- § 7:22 —Prescription
- § 7:23 —Nonjoinder
- § 7:24 —Res judicata
- § 7:25 Initiating exception
- § 7:26 —Time and place of filing
- § 7:27 — —Number of copies
- § 7:28 — —Certificate of service
- § 7:29 —Form and contents of exception
- § 7:30 Oral argument
- § 7:31 Ruling on exception

III. FORMS

- § 7:32 Form affidavit for motion
- § 7:33 Motion for devolutive appeal
- § 7:34 —Another form
- § 7:35 Motion and order for suspensive appeal
- § 7:36 Petition and order for suspensive appeal medical
malpractice case/patient compensation fund
- § 7:37 Petition and order for suspensive appeal
- § 7:38 Motion and order for expedited appeal
- § 7:39 —For extension of time to file original appellate brief

TABLE OF CONTENTS

§ 7:40	—Seeking oral argument
§ 7:41	—To supplement record on appeal
§ 7:42	—To amend denial of writ so as expressly to permit appeal
§ 7:43	Motion for special assignment for argument indigent party
§ 7:44	—For special hearing indigent party
§ 7:45	Motion for continuance
§ 7:46	Motion to remand
§ 7:47	—For trial of exception based on prescription
§ 7:48	Motion to dismiss untimely appeal and order
§ 7:49	—Another form
§ 7:50	Motion to dismiss appeal—Late filing of record on appeal order
§ 7:51	—Untimely perfection order
§ 7:52	—Lack of right to appeal order
§ 7:53	—Judgment unappealable order
§ 7:54	—Abandonment of appeal order
§ 7:55	— —Failure to pay estimated cost of appeal
§ 7:56	—Failure to comply with requirements of posting a bond
§ 7:57	— —Opposing memorandum
§ 7:58	—Motion to dismiss petition for suspensive appeal or in the alternative, motion for contradictory hearing
§ 7:59	—Insufficiency of record on appeal order
§ 7:60	—Premature appeal and no proper notice
§ 7:61	—Change in circumstances
§ 7:62	Joint motion to dismiss appeal after settlement by parties order
§ 7:63	Peremptory exception
§ 7:64	—No cause of action
§ 7:65	—Prescription
§ 7:66	—Res judicata

CHAPTER 8. BRIEFS AND APPENDICES

I. INTRODUCTION

§ 8:1	Briefs as mandatory
§ 8:2	Penalty for noncompliance
§ 8:3	—Illustrations
§ 8:4	Effect of counsel's errors on party
§ 8:5	Competing for court's time

II. CRAFTING EFFECTIVE BRIEFS

§ 8:6	Introduction
-------	--------------

LOUISIANA CIVIL APPELLATE PROCEDURE

- § 8:7 —Importance of appellate brief
- § 8:8 —Importance of effective brief construction
- § 8:9 —Rules as guidance to basic elements of brief construction
- § 8:10 —Mastery of case
- § 8:11 —Integrity of brief
- § 8:12 — —Standards of professionalism
- § 8:13 —Assembly of materials
- § 8:14 —Review of briefs, memoranda, and research
- § 8:15 —Review and abstract of record
- § 8:16 — —How Louisiana appeal records are put together
- § 8:17 — —Methods of reviewing and abstracting record
- § 8:18 — —Dealing with errors in record
- § 8:19 — —Dealing with exhibits and discovery material
- § 8:20 — —Preparing summary
- § 8:21 —Issue selection
- § 8:22 — —Types of issues
- § 8:23 — —Deciding on the issues
- § 8:24 Writing the brief
- § 8:25 —Statement of the case
- § 8:26 — —Presentation of facts
- § 8:27 — —Low-key approach
- § 8:28 — —Use of summary
- § 8:29 — —Dealing with the procedural history
- § 8:30 — —Testing the statement
- § 8:31 —Assignments of error
- § 8:32 — —Relationship of errors to issues
- § 8:33 — —How to describe errors
- § 8:34 — —Assignments in the alternative
- § 8:35 —Formulation of issues
- § 8:36 —Argument
- § 8:37 — —Preparing summary of argument
- § 8:38 — —Brevity and disciplines underlying the argument
- § 8:39 — —Use of subdivisions
- § 8:40 — —Do's and don'ts
- § 8:41 — —Gauging the “appeal” of the appeal
- § 8:42 — —Illustrations
- § 8:43 —Review and inventory your work
- § 8:44 —The conclusion; using an impact statement
- § 8:45 —Effective use of an appendix
- § 8:46 —The syllabus
- § 8:47 —The bottom line
- § 8:48 —Special suggestions for a respondent's brief
- § 8:49 —Special suggestions for a reply brief

TABLE OF CONTENTS

- § 8:50 — —Illustrations
- § 8:51 — —Special suggestions for an amicus curiae brief

III. RULES APPLICABLE TO VARIOUS KINDS OF BRIEFS

- § 8:52 Format rules
- § 8:53 Cover of brief
- § 8:54 Reproduction and service of briefs
- § 8:55 Electronic filing
- § 8:56 Style of briefs
- § 8:57 Case citations
- § 8:58 Citations to statutes, rules, jury instructions, and the like
- § 8:59 References to parties
- § 8:60 References to record
- § 8:61 Briefs in consolidated cases and cases involving multiple parties
- § 8:62 Motions and writs in brief
- § 8:63 Citation of supplemental authorities

IV. RULES FOR APPELLANT’S BRIEF

- § 8:64 Determining who is the appellant
- § 8:65 Time for filing
- § 8:66 Content
 - § 8:67 —Title page
 - § 8:68 —Table of contents: Syllabus
 - § 8:69 —Table of authorities
 - § 8:70 —Jurisdictional statement
 - § 8:71 —Statement of the case
 - § 8:72 — —Motion to strike
 - § 8:73 —Assignments of error
 - § 8:74 —Issues pertaining to assignments of error
 - § 8:75 —Statement of facts
 - § 8:76 —Argument
 - § 8:77 — —Abandonment
 - § 8:78 —Conclusion
 - § 8:79 —Appendix
 - § 8:80 Length

V. RULES FOR APPELLEE’S BRIEF

- § 8:81 Time for filing
- § 8:82 Content
- § 8:83 Length

VI. REPLY BRIEFS

- § 8:84 Time for filing
- § 8:85 Form and content
- § 8:86 Length

VII. AMICUS CURIAE BRIEFS

- § 8:87 Guidelines

VIII. MODIFYING OR EXTENDING TIME FOR FILING

- § 8:88 Court's determination
- § 8:89 Appellee's brief

IX. EFFECT OF FAILURE TO FILE BRIEF

- § 8:90 Untimely filing

X. EFFECT OF LOCAL RULES

- § 8:91 Adherence to local court rules

XI. CHECKLISTS

- § 8:92 Appellant's brief—First Circuit
- § 8:93 —Second Circuit [Reserved]
- § 8:94 —Third Circuit
- § 8:95 —Fourth Circuit
- § 8:96 Appellee's brief—First Circuit
- § 8:97 —Second Circuit
- § 8:98 —Third Circuit
- § 8:99 —Fourth Circuit
- § 8:100 Reply brief—First Circuit
- § 8:101 —Third Circuit
- § 8:102 Checklist—Reply brief—Fourth Circuit

XII. APPENDICES

Appendix 8A. Second Circuit Electronic Filing Rules

CHAPTER 9. ORAL ARGUMENT

I. CRAFTING EFFECTIVE ARGUMENTS

- § 9:1 Purpose and significance of argument
- § 9:2 Preparation for argument

TABLE OF CONTENTS

§ 9:3	—Know the record on appeal
§ 9:4	—Know the court rules
§ 9:5	—Study the briefs
§ 9:6	—Know the most recent authorities
§ 9:7	—Know the court
§ 9:8	—Outline your argument
§ 9:9	—Practice your argument
§ 9:10	Techniques for effective argument
§ 9:11	—Emotion and logic; nature of oral argument on appeal
§ 9:12	—How to dress
§ 9:13	—Psychological considerations in oral argument
§ 9:14	— —Applying the primacy principle
§ 9:15	— —Handling strengths and weaknesses
§ 9:16	— — —Using the climax/anticlimax rule
§ 9:17	—Structuring your oral argument
§ 9:18	— —Opening your presentation
§ 9:19	— —Using a case theme
§ 9:20	— —Using words which are readily acceptable psychologically
§ 9:21	— —Setting out the issues with a word picture
§ 9:22	— —Wrapping up
§ 9:23	— —Rebuttal
§ 9:24	—Maximizing the persuasiveness of your message
§ 9:25	— —Levels of communication
§ 9:26	— —Another look at word selection
§ 9:27	—Verbal techniques in oral argument on appeal
§ 9:28	— —Using analogies
§ 9:29	— —Using rhetorical questions
§ 9:30	— —Understatement
§ 9:31	— —How you should talk
§ 9:32	—Visual communication
§ 9:33	— —Podiums
§ 9:34	— —Importance of spontaneity
§ 9:35	— —Dealing with questions from the judges
§ 9:36	— —The importance of candor
§ 9:37	— —Physical evidence
§ 9:38	— —Seeing as well as hearing quotes
§ 9:39	— —Beware of overusing demonstrative aids
§ 9:40	—Use of nonverbal techniques
§ 9:41	— —Establishing rapport
§ 9:42	— —Avoid shows of hostility
§ 9:43	— —Using amiable aggressiveness
§ 9:44	—Handling complicated factual and medical issues
§ 9:45	— —Using charts

II. REQUESTING ORAL ARGUMENT

- § 9:46 Time of request
- § 9:47 Content of request

III. WHEN ARGUMENT HELD

- § 9:48 Before court of appeal
- § 9:49 Before Supreme Court

IV. WHO MAY ARGUE

- § 9:50 Parties
- § 9:51 Amicus curiae

V. ORDER OF ARGUMENT

- § 9:52 Appellant usually opens

VI. LENGTH OF ARGUMENT

- § 9:53 Before court of appeal
- § 9:54 Before Supreme Court

VII. WAIVER OF ARGUMENT

- § 9:55 Significance

CHAPTER 10. SCOPE AND STANDARDS OF REVIEW

I. SCOPE OF REVIEW

- § 10:1 The Supreme Court
- § 10:2 Courts of appeal
- § 10:3 Limitations on review
- § 10:4 —Final judgment
- § 10:5 — —Multiple decrees; consolidated cases
- § 10:6 —Confession of judgment; acquiescence in adverse judgment
- § 10:7 —Acquiescence in favorable judgment
- § 10:8 — —Acceptance of cash bond
- § 10:9 —Payment of judgment
- § 10:10 —Default judgment
- § 10:11 —Harmless error
- § 10:12 — —Illustrations
- § 10:13 —No review of moot appeals

TABLE OF CONTENTS

§ 10:14	—Injunctive relief
§ 10:15	—Illustrations
§ 10:16	—No review of reasons underlying trial court’s order/judgment
§ 10:17	— —Illustrations of appeal challenging reasons
§ 10:18	—No review of matters not apparent of record
§ 10:19	—Issues raised first in trial court
§ 10:20	— —Jurisdiction
§ 10:21	— —Service of process
§ 10:22	— —Constitutionality of statute
§ 10:23	— —Exceptions
§ 10:24	— —Assignment of errors
§ 10:25	—Law of the case
§ 10:26	— —Application
§ 10:27	—Effect of change in law
§ 10:28	Preserving issue for review
§ 10:29	—Pleading; proffer of evidence
§ 10:30	—Dismissal of less than all claims
§ 10:31	—Matters related to deliberating jury
§ 10:32	—Waiver
§ 10:33	—Waiver Illustrations
§ 10:34	—Illustrations of no waiver
§ 10:35	Raising issue before appellate court
§ 10:36	—Constitutionality of statute
§ 10:37	—New theories asserted on appeal
§ 10:38	— —Illustrations
§ 10:39	— —Generally permitted
§ 10:40	— —Theory-of-the-case doctrine
§ 10:41	— —Affirmative defenses
§ 10:42	— — —Illustrations
§ 10:43	— —Answer to appeal
§ 10:44	—Peremptory exceptions
§ 10:45	— —Illustrations
§ 10:46	—Objections to evidence
§ 10:47	— —Expert testimony
§ 10:48	Effect of orders deciding alternative post-trial motions
§ 10:49	—Motion for new trial
§ 10:50	—Remittitur or additur
§ 10:51	—Motion for judgment notwithstanding the verdict
§ 10:52	—Amendment of judgment
§ 10:53	—Action of nullity

II. STANDARDS OF APPELLATE REVIEW

§ 10:54	Overview of standards of review
---------	---------------------------------

LOUISIANA CIVIL APPELLATE PROCEDURE

§ 10:55	—De novo review
§ 10:56	— —Duty
§ 10:57	— —Review of exception of no cause of action
§ 10:58	— — —Illustrations
§ 10:59	<i>[Reserved]</i>
§ 10:60	Overview of standards of review—De novo review— Grant or denial of summary judgment
§ 10:61	— —Review of exception of prematurity
§ 10:62	— —Designation of partial summary judgment as final
§ 10:63	— — —Illustrations
§ 10:64	— — —Illustrations
§ 10:65	— —Expert testimony
§ 10:66	— —Abandoned action
§ 10:67	— —Illustrations where de novo review declined
§ 10:68	—Manifest error
§ 10:69	— —Matters related to prescription
§ 10:70	— —Sufficiency of evidence
§ 10:71	— —Credibility of witnesses; in general
§ 10:72	— — —Expert testimony
§ 10:73	— —Admission of settlement amount
§ 10:74	— —Allocation of fault
§ 10:75	— —Determinations of unreasonable risk of harm
§ 10:76	— —Causation
§ 10:77	— —Constructive knowledge
§ 10:78	— —Preliminary/permanent injunction
§ 10:79	— —Redhibitory defect
§ 10:80	— —Adverse possession
§ 10:81	— —Annexation
§ 10:82	— —Presumed revocation of will
§ 10:83	— —Workers' compensation cases
§ 10:84	— —Medical malpractice
§ 10:85	— —Insurance cases
§ 10:86	— —Adoption
§ 10:87	— —Certification of class
§ 10:88	— —Decertification of class
§ 10:89	— —Fraud
§ 10:90	— —Unfair Trade Practices and Consumer Law
§ 10:91	— —Louisiana Highway Regulatory Act
§ 10:92	— —Res judicata
§ 10:93	— —Payment of penalty wages
§ 10:94	— —Reopening case for additional evidence
§ 10:95	— —Illustrations of application of manifest error standard to particular factual findings
§ 10:96	—Manifest errors—Damages

TABLE OF CONTENTS

§ 10:97	—Abuse of discretion
§ 10:98	—Substantial evidence
§ 10:99	—Statutory standards of review
§ 10:100	Review of questions of law
§ 10:101	Examples of questions of law
§ 10:102	Review of mixed questions of fact and law
§ 10:103	Standards of review for jury trials
§ 10:104	—Introduction
§ 10:105	—Peremptory challenges
§ 10:106	—Challenges for cause
§ 10:107	—Jury instructions and interrogatories
§ 10:108	— —De novo review
§ 10:109	— —Illustrations
§ 10:110	—Jury verdicts
§ 10:111	— —Tort cases
§ 10:112	—Jury’s findings of fact
§ 10:113	— —Bifurcated trial in which judge and jury make inconsistent findings
§ 10:114	— —Force used to affect arrest
§ 10:115	<i>[Reserved]</i>
§ 10:116	Standard of review for jury trials—Jury’s findings of fact—Allocation of fault
§ 10:117	— —Jury’s determination of damages
§ 10:118	Standards of review for jury trials—Taking evidence to jury room
§ 10:119	Review of discretionary ruling by trial judge
§ 10:120	—Abuse of discretion standard of review
§ 10:121	— —Control of docket and case management
§ 10:122	— —Designation of partial summary judgment as final
§ 10:123	— — —Illustrations
§ 10:124	— —Spousal and child
§ 10:125	— —Setting expert witness fees and assigning costs
§ 10:126	— —Certification of class
§ 10:127	—Amendments to pleadings after answer
§ 10:128	—Qualification of expert witnesses
§ 10:129	—Discovery matters
§ 10:130	—Admissibility of evidence
§ 10:131	— —Illustrations where no abuse of discretion
§ 10:132	—Sanctions
§ 10:133	— —Failure to comply with discovery
§ 10:134	— — —Findings of abuse of discretion
§ 10:135	—Sequestration of witness
§ 10:136	—Rulings on damages
§ 10:137	— —Excessive award

LOUISIANA CIVIL APPELLATE PROCEDURE

§ 10:138	— —Inadequate award
§ 10:139	— — —Illustrations
§ 10:140	— —Consideration of prior awards
§ 10:141	— — —Illustrations
§ 10:142	— —Prejudgment interest
§ 10:143	— —Interest
§ 10:144	—Ruling on damages—Special damages
§ 10:145	— — —Lost wages and loss of income earning capacity
§ 10:146	—Rulings on damages—Special damages—Exemplary
§ 10:147	— —On remand from supreme court
§ 10:148	—Conduct of trial
§ 10:149	—Mistrial
§ 10:150	—Permission to proceed in forma pauperis
§ 10:151	—Child custody
§ 10:152	—Award for attorney fees and of costs
§ 10:153	—Preliminary injunction
§ 10:154	—Annullment of judgment
§ 10:155	Standard of review for administrative determinations
§ 10:156	—Workers' compensation cases
§ 10:157	— —Particular issues
§ 10:158	—Civil service commission
§ 10:159	Standard of review for particular motions
§ 10:160	—Motion to dismiss for lack of subject matter jurisdiction
§ 10:161	—Motion for change of venue
§ 10:162	—Motion to dismiss for failure to state claim
§ 10:163	— —Illustrations of manifest error by trial court
§ 10:164	—Motion for judgment on pleadings
§ 10:165	—Involuntary dismissal
§ 10:166	— —Illustrations
§ 10:167	—Motion for continuance
§ 10:168	—Motion for directed verdict
§ 10:169	—Motion for judgment notwithstanding verdict
§ 10:170	— —Limited to factual issues
§ 10:171	—Motion for summary judgment
§ 10:172	—Motion for new trial
§ 10:173	— —Illustrations of abuse of discretion
§ 10:174	— —Illustrations of no abuse of discretion
§ 10:175	Jones Act, unseaworthiness claims
§ 10:176	Review of grant of lis pendens

TABLE OF CONTENTS

CHAPTER 11. DISPOSITION OF APPEAL

I. TYPES OF DISPOSITIONS

- § 11:1 Revision, modification, setting aside, or reversal of trial court judgment
- § 11:2 —Amending judgment
- § 11:3 Reversal
- § 11:4 Rendering of appellate court judgment
- § 11:5 —In accordance with existing law
- § 11:6 —Entry of money judgment
- § 11:7 —Illustrations of rendering judgment
- § 11:8 —Taxing costs
- § 11:9 — —Attorneys’ fees
- § 11:10 Awarding damages for frivolous appeal
- § 11:11 —Constraints on award
- § 11:12 —Conduct warranting award of damages
- § 11:13 — —Effect of losing on appeal
- § 11:14 — —Effect of dismissal of appeal
- § 11:15 — —Pro se litigants
- § 11:16 —Conduct not warranting award of damages
- § 11:17 —How requested
- § 11:18 — —By answer or cross-appeal
- § 11:19 — —By motion to dismiss
- § 11:20 — —In brief or oral argument
- § 11:21 —Nature of recovery

II. BASIS FOR DECISION

- § 11:22 The general rule
- § 11:23 —Preparation and briefing implications
- § 11:24 —Exceptions to the general rule

III. RENDERING OPINIONS

- § 11:25 Types of opinions
- § 11:26 —Formal opinion
- § 11:27 —Memorandum opinion or summary disposition
- § 11:28 Designation for publication
- § 11:29 —Use of unpublished opinions

CHAPTER 12. POST DISPOSITION PROCEEDINGS

I. RECONSIDERATION OF APPEAL

- § 12:1 Application for rehearing

- § 12:2 —Time for application
- § 12:3 — —Mailing of application
- § 12:4 — —Extension of time
- § 12:5 —Form and style
- § 12:6 —Grounds
- § 12:7 —Number of rehearings
- § 12:8 Response to application
- § 12:9 Oral argument
- § 12:10 Ruling on application
- § 12:11 Final judgment

II. RECONSIDERATION OF WRIT

- § 12:12 Court of appeals
- § 12:13 —No rehearing for grant or denial of supervisory or remedial writ or rule nisi
- § 12:14 —Reconsideration permitted for grant or refusal to grant peremptory mandamus or prohibition
- § 12:15 Supreme Court
- § 12:16 —No rehearing for denial of writ application
- § 12:17 —Court may reconsider grant of writ

III. REMAND

- § 12:18 Authority to remand
- § 12:19 Seeking remand
- § 12:20 —Time limits
- § 12:21 —Oral argument and/or briefs
- § 12:22 Discretion as to remand
- § 12:23 Remand for new trial
- § 12:24 —Illustrations
- § 12:25 Remand to consider exception of prescription
- § 12:26 Remand due to procedural errors in conduct of trial
- § 12:27 Remand to take additional evidence
- § 12:28 Remand of administrative proceeding
- § 12:29 Remand to provide written reasons for judgment
- § 12:30 Remand to determine mootness

IV. ENFORCEMENT OF JUDGMENT AFTER DISPOSITION

- § 12:31 Procedure

V. APPLICATION FOR PROTECTIVE WRIT

- § 12:32 Consequences from failure to file

TABLE OF CONTENTS

VI. FORMS

§ 12:33 Form—Application and order for rehearing

CHAPTER 13. REVIEW BY SUPERVISORY WRIT

I. OVERVIEW

§ 13:1 Standards of review

II. SUPREME COURT

- § 13:2 Discretion to grant or deny writs
- § 13:3 Grounds for writ
 - § 13:4 —Conflicting decisions
 - § 13:5 —Significant unresolved issues of law
 - § 13:6 —Overruling or modification of controlling precedents
 - § 13:7 —Erroneous interpretation or application of constitution or laws
- § 13:8 —Gross departure from proper judicial proceedings
- § 13:9 —Grounds in addition to listed criteria
- § 13:10 Application for writ
 - § 13:11 —Filing and service requirements
 - § 13:12 —Owners of mineral rights
 - § 13:13 —Form and content of application
 - § 13:14 — —Memorandum
 - § 13:15 — —Appendix
 - § 13:16 —Time for filing
 - § 13:17 — —Review of trial court action or inaction
 - § 13:18 — —Election cases
 - § 13:19 — —Mailing of application
 - § 13:20 — —Application forwarded by private delivery or courier service
- § 13:21 Opposition to application
 - § 13:22 —Memorandum
 - § 13:23 —Time for filing
- § 13:24 Reply to opposition
- § 13:25 Oral argument and briefs
- § 13:26 Disposition

III. COURTS OF APPEAL

- § 13:27 Grounds for writ
 - § 13:28 —Irreparable injury
 - § 13:29 —Examples of cases in which supervisory jurisdiction exercised

- § 13:30 —Examples of cases in which supervisory jurisdiction not exercised
- § 13:31 —Examples of cases in which supervisory jurisdiction exercised—Worker’s compensation and wrongful death cases
- § 13:32 Application for writ
- § 13:33 —Notice of intention
- § 13:34 —Time to file
- § 13:35 — —Extension of time
- § 13:36 —Request for expedited consideration
- § 13:37 —Stay of proceedings
- § 13:38 —Form and content of application
- § 13:39 — —Signature and affidavit
- § 13:40 — —Checklist
- § 13:41 — — —First Circuit
- § 13:42 — — —Third Circuit
- § 13:43 — — —Fourth Circuit
- § 13:44 —Trial or hearing set after filing of application or date included in filed application changed or continued
- § 13:45 Opposition, argument, and disposition of application
- § 13:46 Notice of disposition

IV. FORMS

- § 13:47 Form—Writ application filing sheet
- § 13:48 —Writ application intake form—Fourth Circuit
- § 13:49 — —Second Circuit
- § 13:50 — —Fifth Circuit
- § 13:51 —Writ checklist—First Circuit
- § 13:52 — —Second Circuit (Intake Form)
- § 13:53 — —Third Circuit
- § 13:54 *[Reserved]*
- § 13:55 Form—Writ checklist—Fifth Circuit (Intake Form)
- § 13:56 —Sample application for writ of supervisory review

CHAPTER 14. COSTS

I. OVERVIEW

- § 14:1 Payment of costs to appellate court
- § 14:2 —Payment by first appellant
- § 14:3 —Effect of appellant’s failure to timely pay
- § 14:4 — —Dismissals not favored
- § 14:5 —Costs paid by other appellants or by appellees
- § 14:6 —Effect of designation of contents of record

TABLE OF CONTENTS

- § 14:7 Payment of trial court costs
- § 14:8 Costs of application for writs from trial court
- § 14:9 Costs of application for rehearing or review

II. RECOVERING COSTS

- § 14:10 Allocation by judgment of costs
- § 14:11 —Equitable assessment of costs
- § 14:12 —Splitting costs
- § 14:13 —Unjustifiable items of costs
- § 14:14 —Suits by or against public bodies
- § 14:15 Recoverable costs
- § 14:16 —Charges for preparing the record
- § 14:17 —Court reporter's fees
- § 14:18 —Appellate court filing fee
- § 14:19 Nontaxable costs
- § 14:20 —Attorneys' fees absent special statute
- § 14:21 —Travel expenses
- § 14:22 —Suspensive appeal bond premiums
- § 14:23 —Costs of reproduction of briefs

III. SPECIAL RULES FOR *IN FORMA PAUPERIS* APPEALS

- § 14:24 Prepayment of costs

IV. FORMS

- § 14:25 Motion to establish amount of attorneys' fees incurred in connection with appeal
- § 14:26 Motion and Incorporated Memorandum to Establish Amount of Attorney's Fees, Costs, and Expenses Incurred in Connection with Appeal and Collection of Judgment
- § 14:27 Motion and Incorporated Memorandum to Establish Amount of Attorney's Fees, Costs, and Expenses Incurred in Connection with Appeal and Collection of Judgment—Memorandum in Opposition to [name of plaintiff]'s Motion and Incorporated Memorandum to Establish Amount of Attorney's Fees, Costs, and Expenses Incurred in Connection with Appeal and Collection of Judgment
- § 14:28 Plaintiff's motion and incorporated memorandum to tax costs against trial defendants cast in judgment

APPENDIX

Appendix A. Uniform Rules of Louisiana Courts of Appeal

LOUISIANA CIVIL APPELLATE PROCEDURE

Table of Laws and Rules

Table of Cases

Index