



An Appeal to Reason: 204 Strategic Tools to Help You Win Your Appeal at Trial

By Donna Bader, Bench Press Publishing, 256 pgs, \$55.00

Donna Bader is a certified appellate specialist in Laguna Beach. Her new book is titled, *AN APPEAL TO REASON: 204 STRATEGIC TOOLS TO HELP YOU WIN YOUR APPEAL AT TRIAL*. At first, I thought Donna's book was particularly valuable because it teaches trial lawyers what they have to do at every stage of the trial process to maximize their chances of prevailing in the event that their case is reviewed by an appellate court. As an appellate lawyer myself, this struck me as a very useful undertaking. Then it hit me — the real value in this book is not that it will help you win your appeals. Rather, it will help you win at the trial-court level. The appeals will take care of themselves at that point. As the title of the book explains, the best way to win an appeal is to win in the trial court.

From the appellate lawyer's point of view, I see a fairly common thread of reasons that stand as obstacles to success in the appeals I'm approached to handle. That is, there are certain traps that trial lawyers frequently fall into that can have devastating consequences later in the process. Donna's book systematically examines those traps and explains how to avoid them. I suspect that most lawyers seasoned enough to be willing to take a case to trial will not be terribly surprised by the advice in the book. They probably have heard all the information before, but they accumulated it in an unfocused, general way. Donna's book collects these "Oh, yeah, I knew that" rules, and pulls them into a brief, organized narrative that will help any trial lawyer. It will also help appellate lawyers because it puts a great deal of frequently-needed rules and citations in a single, handy volume.

The book is organized into nine chapters, each with about 25 numbered rules. Each rule has a paragraph of explanation. Each chapter begins with a

scenario that will be common to appellate lawyers, and concludes with a handful of bulleted "tips for success." The genius in the book is how many of the rules correspond to a common, and usually easily-avoided pitfall in trial practice.

Chapter 1 is "Understanding the role of attorneys in the appellate process." It covers one of my favorite topics — the difference in mentality between trial lawyers and appellate lawyers. More importantly, it differentiates between the different roles that trial lawyers and appellate lawyers play in the process, and shows how a misunderstanding that these roles are distinct can lead to poor results at both levels.

Rules 6, 7, and 8 will give you a feel:

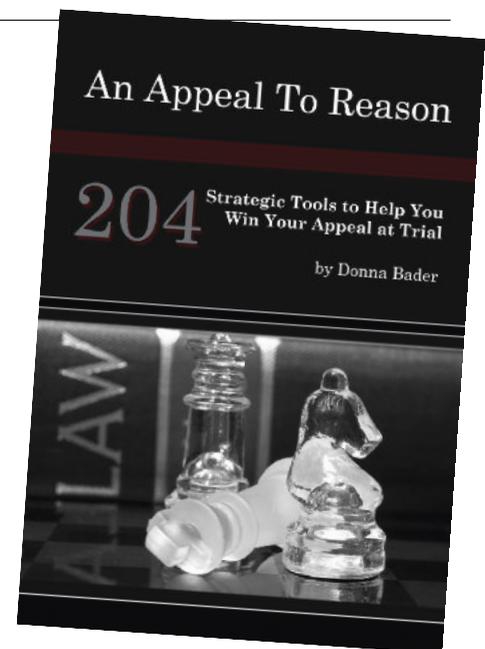
6. Don't act like a trial attorney if you are handling your client's appeal.
7. Appellate attorneys do not simply recycle the work of the trial attorney.
8. Don't reuse a work product that failed to persuade the trial court below.

Chapter 2 is "Obstacles attorneys face on appeal." It explains the appellate process, including the concepts of "error" and "prejudice," and how they shape how appellate courts function.

Chapter 3 deals with the related issue of the various appellate standards of review. It explains why understanding the standard is often the key to how the appeal must be presented, and offers concrete tips on how to improve your odds, regardless of which standard applies.

Chapter 4 then focuses on the trial-court process — "It all begins with an objection." The chapter explains how to make a timely, proper objection; why it's important; how to deal with motions in limine; and when to use motions to strike.

Chapter 5 deals with common law-and-motion problems, including demurrers and motions for summary judgments. Donna explains when to file them, when



not to, how to make them more persuasive, and how to avoid getting tripped up by the myriad procedural rules that govern law-and-motion practice. (I am particularly fond of rule 96: "Prepare your declarations according to the Code of Civil Procedure section 2015.5." This is the section that prescribes the "magic words" that a declaration must contain in order to be admissible — the jurat. Most lawyers follow the rules because they copy someone else's declaration that followed them. This rule explains why declarations say, "I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.")

Chapter 6 is titled, "The Court Reporter." It deals with the need to make sure that you get what happens in court on the record. This sounds basic, but it can make or break an appeal. It also gives trial lawyers the citation to the Government Code section that *requires*



that proceedings be put on the record when the lawyer requests it. It's handy to have the citation if you need to insist on getting something reported when the court wants to do it "off the record."

Chapter 7 is "Court trials — the Statement of Decision." This is an area fraught with peril. The process of getting a valid statement of decision is complex, and this chapter lays out the process very clearly.

Chapter 8 is "Jury Trials" and breaks them down into issues concerning jury instructions, verdict forms, and how to deal with "bad behavior" by opponents, by jurors, and by judges. Again, in this chapter is a wealth of information about how to avoid mistakes that are easy to make, but potentially catastrophic.

Finally, Chapter 9 is "After the trial is over" and deals with post-trial motions and notices of appeal.

The entire book is remarkably brief and approachable given the density of information it contains. It is certainly worth reading for both trial and appellate lawyers. Maybe more importantly — it's worth buying. This will be a valuable book to have on your bookshelf or desk.

– *Reviewed by Jeffrey Isaac Ehrlich*

