

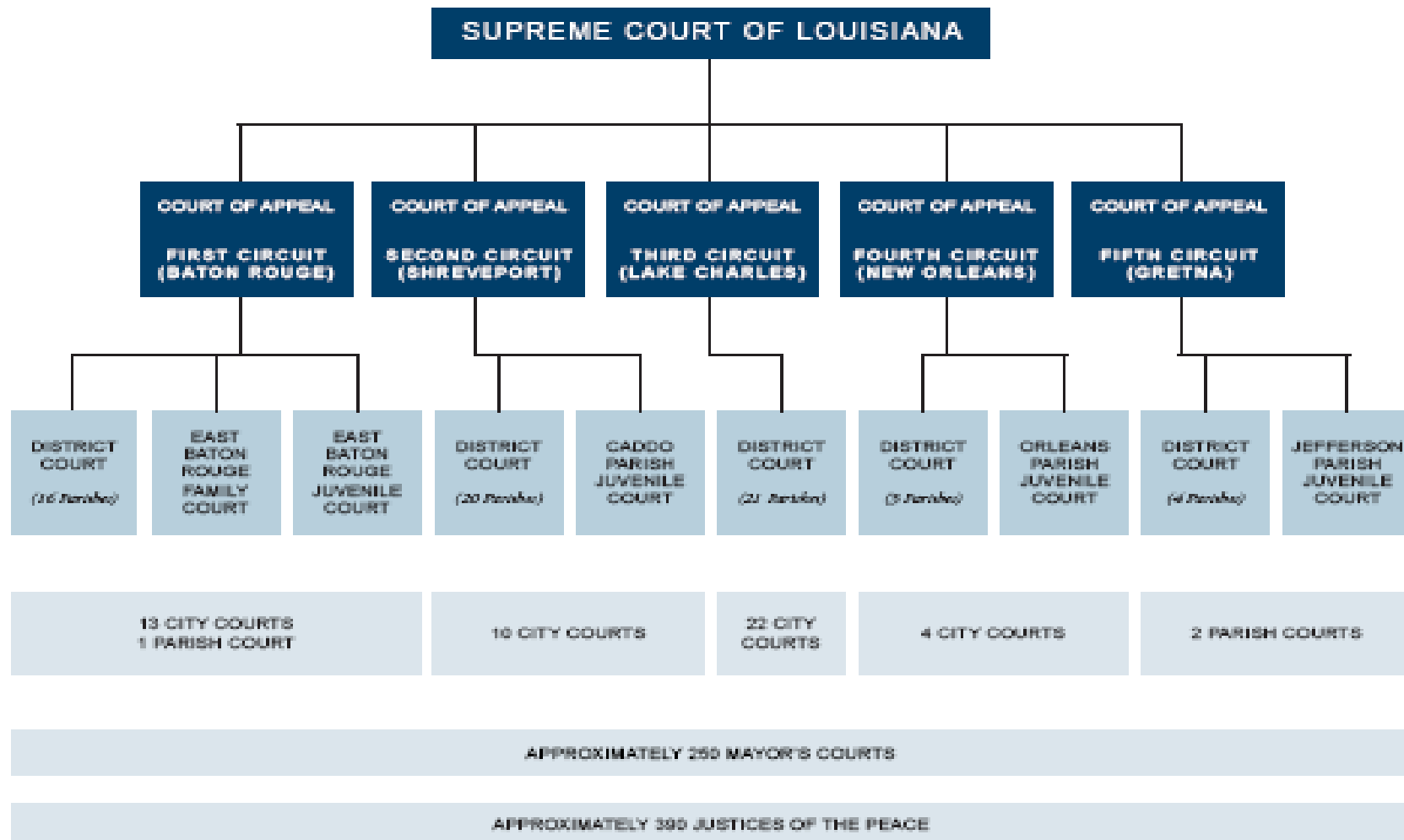
Appellate Practice

Bridging the Gap
La. State Bar Association
Oct. 19, 2010

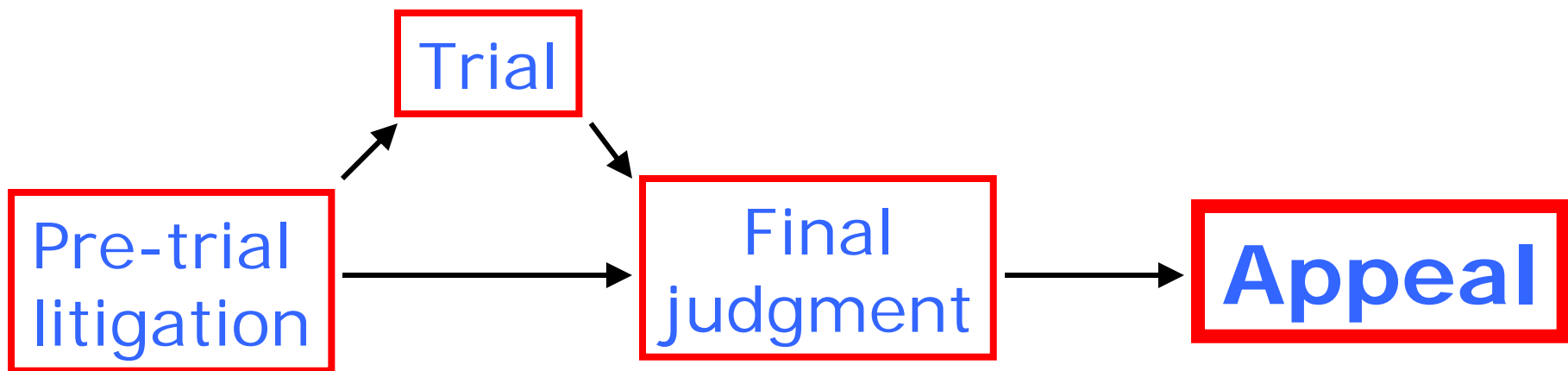
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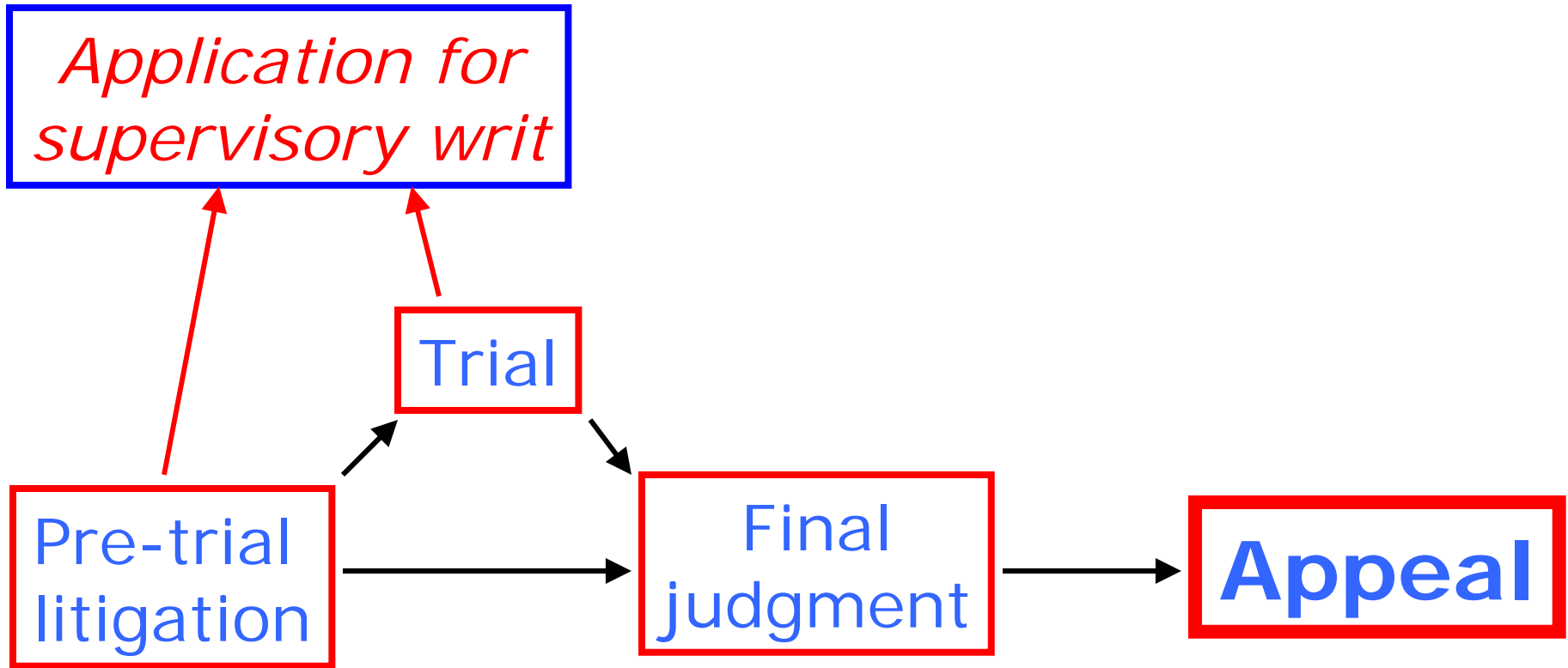
What we'll talk about

- Applications for supervisory writ
- Writing an appellate brief
- Preparing for and delivering oral argument
- Writ applications to the La. Supreme Court.

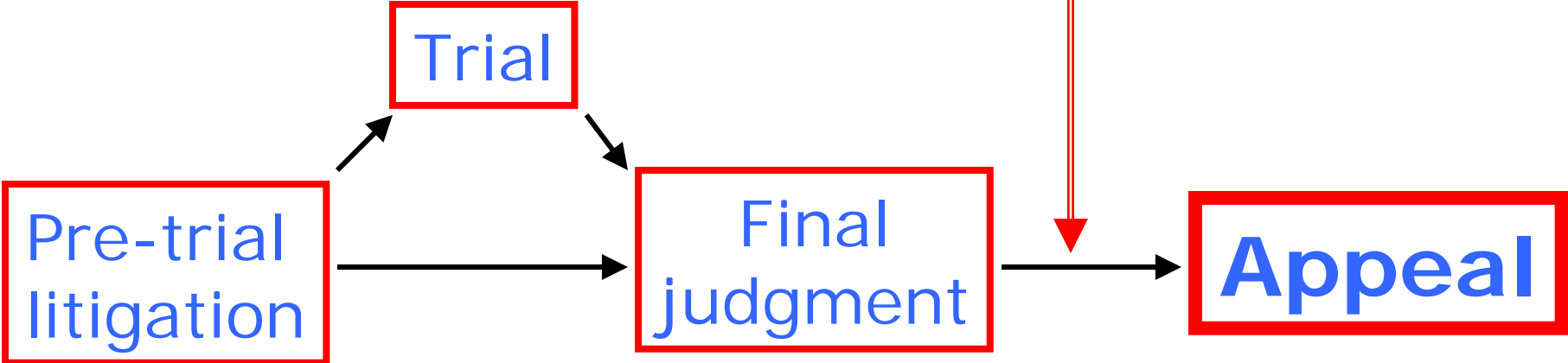


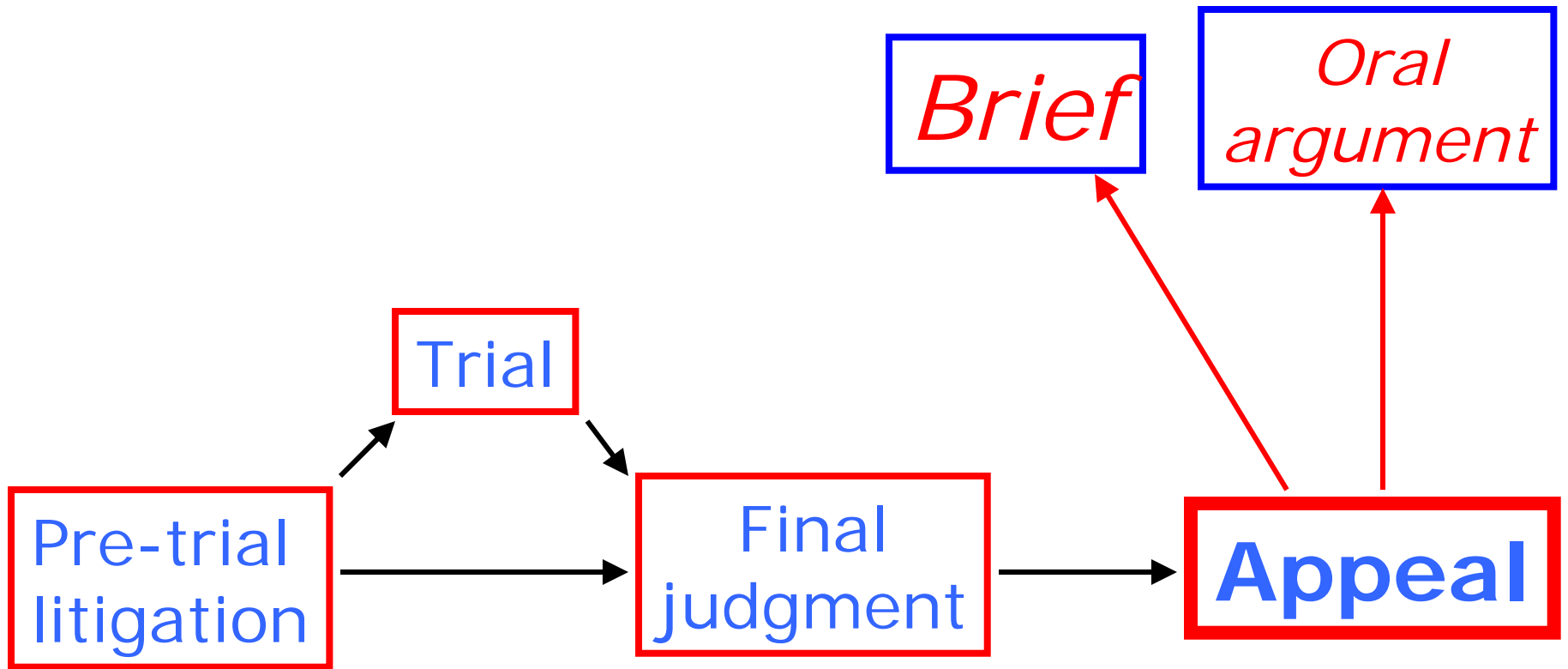
Source: Annual Report 2008 of the Judicial Council of the Supreme Court of La.

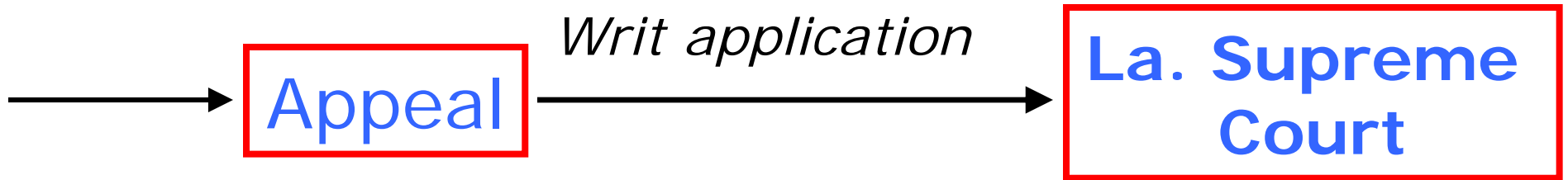




How to take an appeal







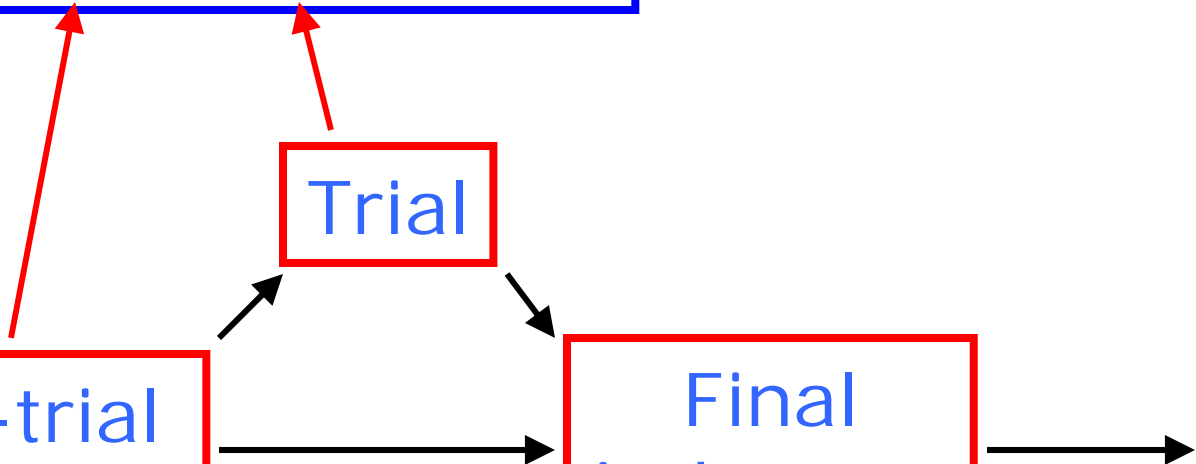
*Application for
supervisory writ*

Pre-trial
litigation

Trial

Final
judgment

Appeal



Law governing supervisory writs

- Standards for granting a writ
 - Irreparable injury
 - *Herlitz Constr. Co. v. Hotel Investors of New Iberia*
- Standards of review
 - Legal questions: de novo
 - Discretionary decisions: abuse of discretion
 - Fact findings: manifest error.

Mechanics

- *Everything* you need to know, you will find in:
 1. Uniform Rules, La. Cts. Appeal
 2. The court of appeal's local rules

Where to find the court rules

- La. Rev. Stat. Ann. Title 13
- West's La. Rules of Court—State
- Each court of appeal's web site

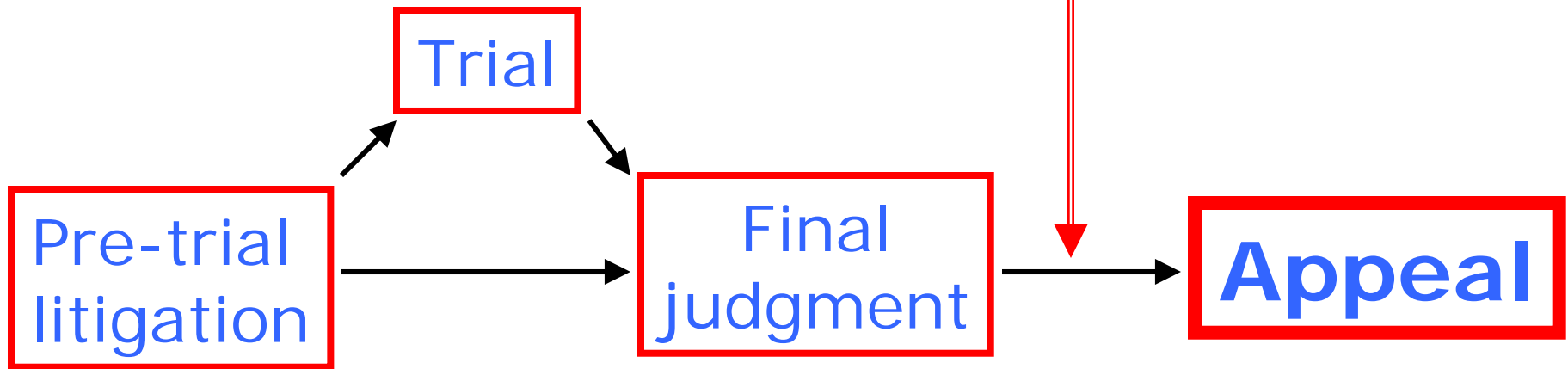
Time to file

- Generally, within 30 days after notice of adverse ruling, you must:
 - File (in trial court) a notice of intent to seek supervisory writ
 - Obtain (from the trial court) an order setting a return date
 - File the writ application in the court of appeal within the time set by the trial court.
- See Unif. R. 4-2 and 4-3; La. Code Civ. P. 1914.
- See R. Ward, *A Writ in Time*, 51 La. B.J. 338 (Feb.-Mar. 2004).

Content of writ application

- A writ application is a brief with a bunch of stuff attached.
- Rules governing form, content, and attachments:
 - Unif. R. 4-5 (form and content)
 - Unif. R. 4-4 (expedited consideration)
 - Unif. R. 2-12.2 (governing briefs)

How to take an appeal



Where to find everything you need to know to take an appeal

- La. Code Civ. P. arts. 2081–2166
- La. Code Crim. P. arts. 911–923

What to do when the record is lodged

- If you want oral argument, file a request within 30 days (UR 2-11.4).
- If you represent the appellee, be mindful of your deadline to answer the appeal (CCP 2133(A)).
- Inspect the record to make sure it's complete.
- Borrow the record and make a copy for yourself.

Warning

World's worst PowerPoint slide ahead



The importance of the record

“Arguing about the law in the abstract is interesting and fun, but what wins cases is the lawyer’s ability to marshal the facts littered over an extensive trial court record in a way that’s consistent with favorable controlling authority. It is true that there are some cases where the facts are clear or stipulated, and the law is the only issue. But these are the rare exceptions. In real-life appellate advocacy, the record plays a key role, and a lawyer’s mastery of the record—or lack thereof—often makes the difference between winning and losing.”

Hon. Alex Kozinski, *In Praise of Moot Court—Not!*, 97 Colum. L. Rev. 178, 189 (1997).

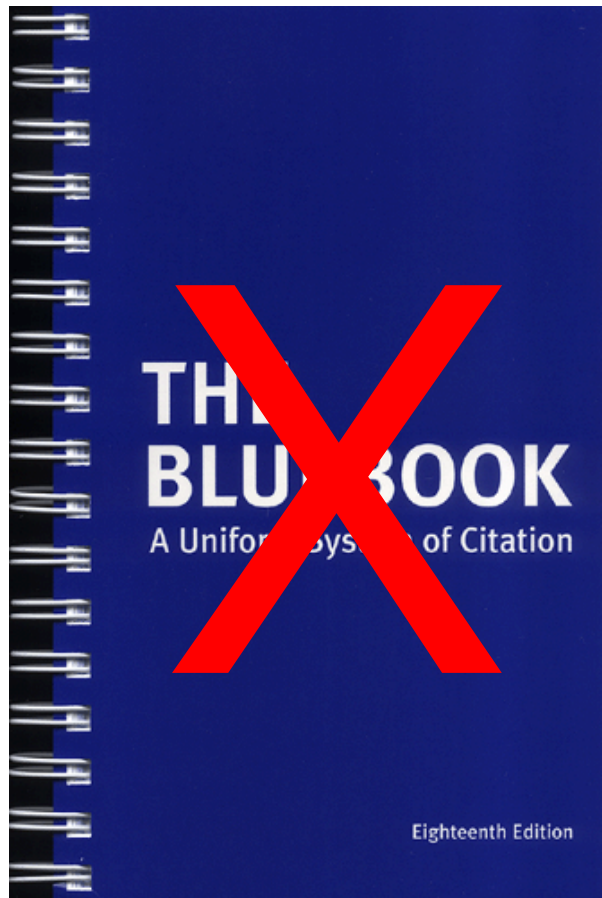
When the record is lodged

- Borrow it. (Examine exhibits at clerk's office)
- Inspect it to make sure it's complete.
 - If incomplete, move to supplement.
 - If it's not in the record, it doesn't exist as far as the court of appeal is concerned.
- Make your own copy.

What else (besides the record) you need to know to write a brief

- Unif. R. 2-12 (2-12.1 – 2-12.8)
- Your court's local rules
- Highly recommended:
 - Bryan A. Garner, *The Winning Brief*
 - Hon. Ruggero J. Aldisert, *Winning on Appeal*

Louisiana's citation rule



Louisiana's citation rule (for cases decided after 1/1/94)

Wrong:

Boudreaux v. State, 815 So. 2d 7 (La. 2002)

Correct:

Boudreaux v. State, 2001-1329 (La. 2/26/02), 815 So. 2d 7.

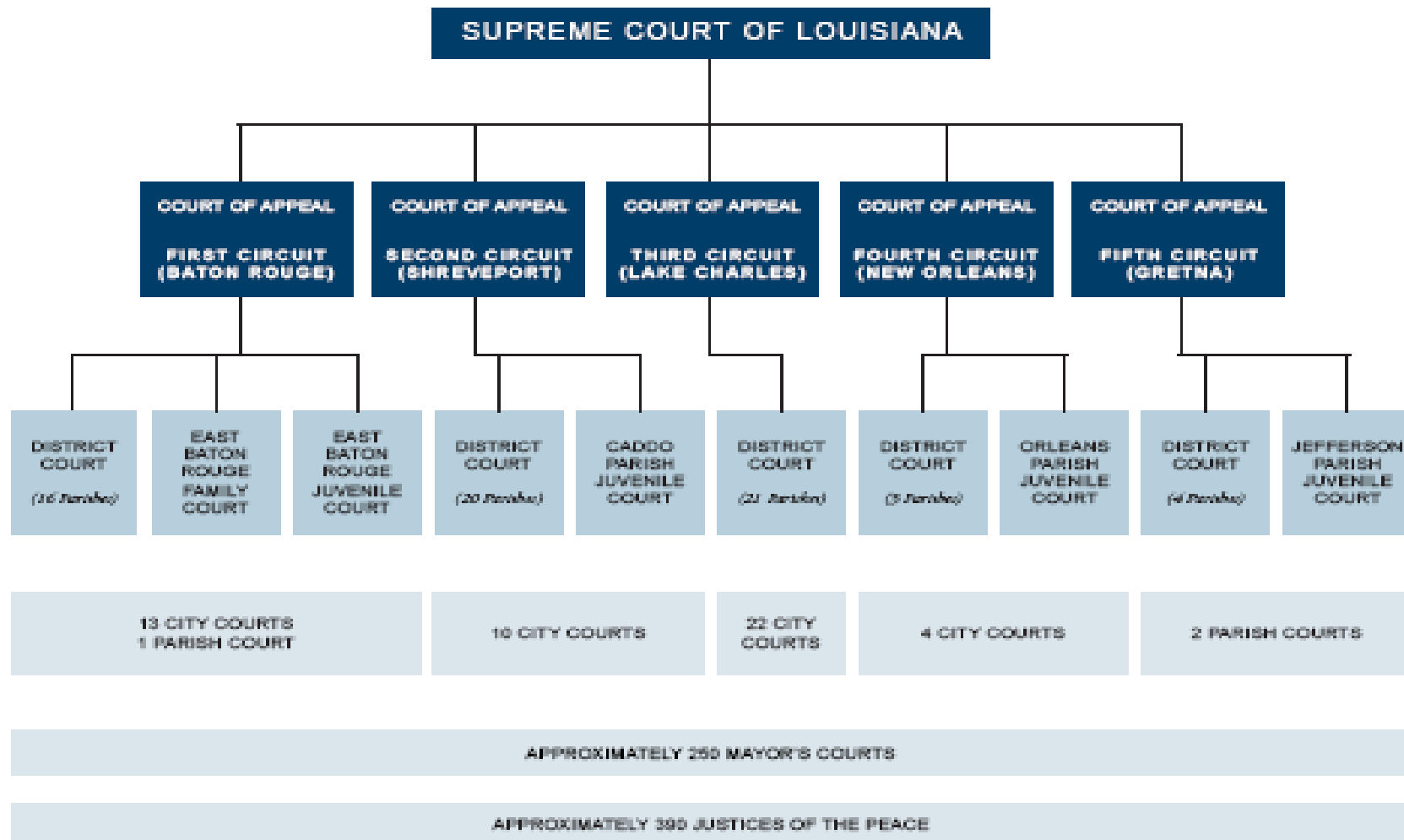
- Vendor-neutral citations of cases decided from 1994 forward:
 - LSC Rules, Part G, General Administrative Rules, § 8
 - Unif. R. 2-12.4.
- In La. courts of appeal, give parallel citations to U.S. Supreme Court decisions. (Unif. R. 2-12.4.)

Tips for oral argument

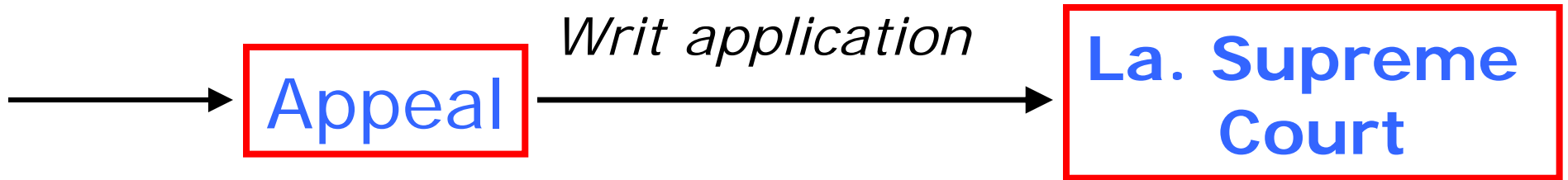
- Read Unif. R. 2-15.
- You're not required to use all your time.
- Prepare, prepare, prepare.
 - Know the record inside-out.
- Answer questions directly and immediately.
- Suggested reading:
 - Ruggero J. Aldisert, *Winning on Appeal*
 - Bryan A. Garner, *The Winning Oral Argument*

The Supreme Court





Source: Annual Report 2008 of the Judicial Council of the Supreme Court of La.



2009 Stats

	Civil	Criminal
Filed (except prisoner pro se)	987	523
Prisoner pro se writs	59	977
Granted	100	236
Dismissed	18	11
Not considered	43	21
Denied	906	1179

Source: Annual Report 2009 of the Judicial Council of the Supreme Court of La.

Everything (almost) you need to know to write a writ app.

- Rule 10, Rules of La. Supreme Court
 - LSA Title 13
 - West's Louisiana Rules of Court
 - www.lasc.org
- *Boudreaux v. State, DOTD*

Writ-grant considerations— Rule 10 § 1(a)

1. Conflicting decisions
2. Significant unresolved issue of law
3. Overruling or modification of controlling precedents
4. Erroneous interpretation or application of constitution or laws, *and* ct. app.'s decision
 - Causes material injustice, or
 - Significantly affects public interest
5. Gross departure from proper judicial proceedings

Substance of writ app.—

Rule 10 § 1(b)

- “The application for writs shall address, in concise fashion, why the case is appropriate for review under the considerations stated in subsection (a) above”

Why are writ-grant considerations so important?

- Read *Boudreaux v. State, DOTD*

For everything else you need to know

- Read Rule 10 for:
 - Form of writ application
 - Contents of writ application
 - Attachments to writ application
 - Time to file writ application
 - Oppositions to writ application
 - Reply in support of writ application

The lifelong pursuit of excellence

- Books

- Bryan A. Garner, *The Winning Brief*

- Ruggero J. Aldisert, *Winning on Appeal*

- Seminars

- Anything by Bryan A. Garner

- DRI appellate seminars (www.dri.org)

- Appellate Judges Education Institute

- ABA-CAL Appellate Practice Institute