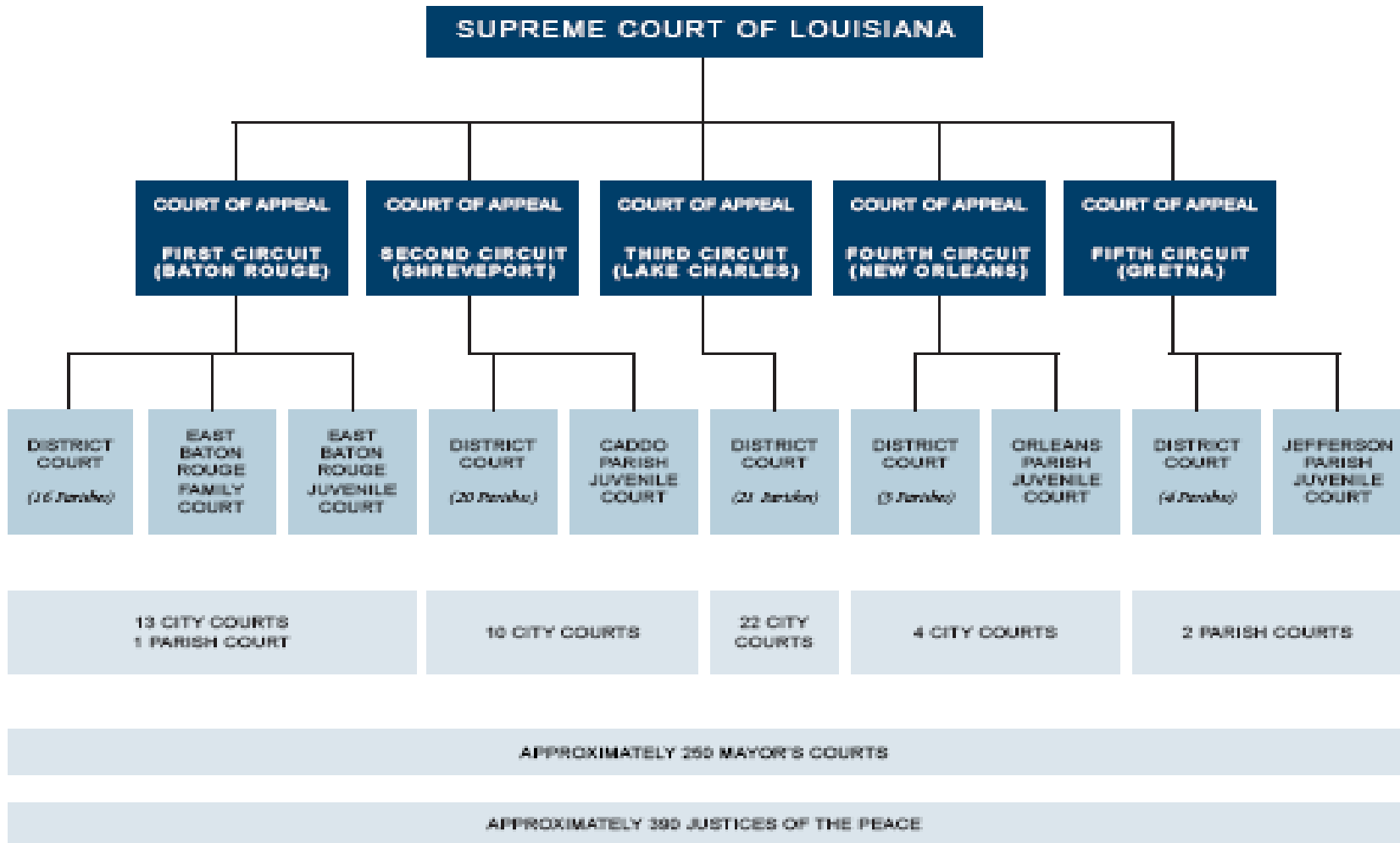


Appellate Practice

Hon. Harry T. Lemmon
Raymond P. Ward



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

Jurisdiction

- District court: Original jurisdiction
- Courts of appeal: Appellate and supervisory
- Supreme Court: Mostly supervisory (discretionary)

Function

- District courts
 - Accept evidence
 - Determine facts
 - Apply law to facts
- Courts of appeal
 - Correct error
- Supreme Court
 - Develop the law

The game changes

- In the court of appeal, no retrial.
 - Live with the record made in trial court.
No new evidence.
 - Rule 1-3.
 - Standards of review
 - Fact findings—very deferential.
 - Discretionary calls—somewhat deferential.
 - Questions of law—de novo.

The game changes

- In the La. Supreme Court, *not* a second layer of appellate review.
 - Same restrictions as in court of appeal
 - Writ-grant considerations (LSC Rule 10)

Nuts and bolts

- Application for supervisory writ
- Appeal
- Application to La. Supreme Court for writ of review

Forms = Vampires



- “The world changes, we do not.”
- Conform (maybe) to obsolete, outdated rules
- Preserve bad legal writing

The rules

- La. Const. art. V
- Code Civ. P. arts. 2081-2201
- Code Crim. P. arts. 911-923
- Uniform Rules Cts. App.
- Local Rules Cts. App.
- La. S. Ct. Rules 10, 7, 8, and 9.

Where to find the rules

- Courts' web sites
- Green books (in back of Rev. Stat. title 13)
- West "La. Rules of Court" book

Supervisory writs

- Function – to obtain immediate appellate review of an interlocutory judgment.

Supervisory writs

- Substance
 - Limits on supervisory jurisdiction
 - Irreparable injury
 - Herlitz
 - Standards of review
 - Fact-finding: manifest error
 - Discretionary calls: abuse of discretion
 - Legal questions: de novo

Supervisory writs

- Nuts and bolts: See Unif. R. 4-1 thru 4-8.
 - File (in trial court) notice of intent to seek supervisory writ
 - Get judge's signature on order setting a return date (deadline for filing in court of appeal)
 - Assemble and file writ application in court of appeal within deadline

Supervisory writs

- Stay or expedited consideration: see Unif. R. 4-4.
- Opposition

Appeal

- Taking the appeal
- Writing the brief
- Oral argument

Appeal

- To take an appeal
 - Make sure the judgment is appealable
 - Perfect the appeal timely.
 - File motion for appeal and get judge's signature on order granting appeal
 - If a suspensive appeal, furnish security
 - Pay estimated appeal costs

Cheaper way to appeal

- Record designation – CCP 2128
- Must be done within 3 days after taking appeal
- Advantage: saves \$\$\$
- Disadvantage: limits scope of appeal.
(see CCP art. 2129)

Appeal

- Notice of lodging
 - Triggers 15-day period for appellee to answer the appeal
 - Triggers 30-day period to request oral argument (Unif. R. 2-11.4)
 - Triggers briefing schedule (25 days for appellant, 45 days for appellee)

Speaking 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... 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.”

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

Appeal brief

- Number of copies: Unif. R. 2-12.1
- Form: Unif. R. 2-12.2
- Cover: Unif. R. 2-12.3
- Content:
 - Appellant: Unif. R. 2-12.4
 - Appellee: Unif. R. 2-12.5
 - Reply: Unif. R. 2-12.6
- Time to file: Unif. R. 2-12.7

Citing cases La. style



Citing cases La. style

Wrong:

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

Right:

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

- In La. courts of appeal, give parallel citations to U.S. Supreme Court decisions. (Unif. R. 2-12.4.)

Oral argument / Submission

- Request for oral argument (Unif. R. 2-11.4)
- Rules 2-15.1 thru 2-15.4
- Time:
 - 40 minutes total (20 per side)
 - In La. 5th Cir. (and lately, 1st Cir.), 30 minutes total (15 per side)

Supplemental authorities

- Letter under Unif. R. 2-12.6.1.
 - Name and citation of the authority
 - Issue raised by that case pertinent to your case
 - Citation to page in brief where issue raised or description of where and how issue arose during oral argument
 - Two-page limit; no argument allowed.

Rehearing

- Available? Check Unif. R. 2-18.6 and 2-18.7
- 14-day deadline
- 10-page limit
- Not a prerequisite for writ application to La. Supreme Court
- Timely filing interrupts 30-day time for writ application to La. Supreme Court (30 days runs anew from decision on rehearing or denial of rehearing)

Louisiana Supreme Court

A Visit to the Louisiana Supreme Court
Color My Adventure



Writ-grant rates 2010

Total	17%
Civil	13%
Criminal	24%

Rule 10 overview

- Writ-grant considerations §1
- General filing requirements § 2
- Contents – civil writ app. § 3
- Contents – criminal writ app. § 4
- Time for filing § 5
- Oppositions § 6
- Reply to opposition § 7

Rule 10 § 1(a) writ-grant considerations

1. Conflicting decisions
2. Significant unresolved issue of law
3. Overruling or modifying controlling precedent
4. Erroneous interpretation or application of constitution or law, *and*:
 - Material injustice, or
 - Significantly affects public interest
5. Gross departure from proper judicial proceedings

If writ is granted

- You must brief every issue raised in the writ application.
 - Any issue in the writ app. that is not briefed will be deemed abandoned.
- You must *not* brief any issue not raised in the writ application.
 - Any issue not raised in the writ application is not properly before the Court.
 - “Reserving” an issue in a writ-app footnote does not preserve it.