The adversarial process is by no means a perfect method of resolving disputes. But time and experience have shown that it is by far the best system ever devised. Its contentious nature gives the litigants an opportunity to fully air their points of disagreement, and it ensures that the opposing parties’ positions are duly considered since their advocates are arguing passionately for their best interests.

The lawyer’s task is made even more difficult by the fact that the court invariably faces a significant caseload and there are many other cases striving for their attention. This renders it imperative that the litigator make the best argument in the most efficient way possible.

The judge opens a new case and faces prior judicial decisions, statutory language, constitutional principles, and procedural rules that serve as signposts. The judge will lean one way and then the other as the arguments of counsel are presented. By the end of the process, the judge will have read the briefs and key precedents, considered the difficult issues, and wrestled with how the case at hand fits into the matrix of applicable legal precedents.
Over the years, judicial caseloads have increased dramatically, and, unfortunately, court resources have not kept pace. Courts have attempted to increase productivity through the use of computer technology and modern management techniques. But the fact remains that litigation is by its very nature time-consuming.

The ultimate advice for any practitioner is simply this: Before putting words to paper in a motion or brief, you must first set aside your adversarial role and try to think like a judge. Not just any judge—you must think like the judge before you. You have to try and impose yourself into the mind of the particular person who will hear your case.

If the positions were reversed, and you sat where the judge does, think of what it is that you would want to know about the case:

- In what order would you want the story told?
- How would you want the case unraveled?
- What would facilitate your approach to a solution?

As the advocate, you must face these and many other difficult questions in order to make the case clear to the judge. If the court has to struggle to grasp the issues of the case, you have not fulfilled your duty to communicate effectively.

An artfully written trial or appellate brief is the cornerstone of a well-argued case, and the litigator is well-advised to follow a number of basic principles:

**Good Organization**

A brief that is solidly prepared reflects a logical progression of reasoning—from the premises of the argument through to its legal principles and then on to the ultimate conclusion. Good organization is like a road map that enables the judge to follow the argument from beginning to end without getting lost. A poorly organized brief often misunderstands the starting point, obscures the destination, and confuses the road in between. Deciding a case is difficult enough for a judge without these impediments.
**Brevity**

Wordiness is more than verbosity. It means trying to convey too much information or covering too many issues in a brief. Such wordiness reflects the failure to separate the material from the immaterial. Good pre-drafting analysis results in clearer prose and more concise arguments. Less really is better.

**Precision and Clarity**

Precision is the main goal of good writing. The failure to write simple, straightforward briefs is often the result of a lawyer’s tendency to avoid analysis by overgeneralizing. A lawyer who is not sure of a legal principle or how to state it precisely may remain vague to conceal his uncertainty. To write with clarity and precision, you must know exactly what you want to say. Painstaking and thoughtful editing is essential for precise writing. This means going over the brief, sentence by sentence, and asking:

- What do I mean to say here?
- Have I said it, and no more?
- Could it be stated any more clearly?

**The Art of Well-Written Legal Arguments**

Judges appreciate a well-written brief that goes directly to the issue before the court, and they offer some helpful advice in this regard:

- **Use simple language.** Efforts to show your command of the English language or to impress the court are almost never effective.
- **Be brief.** State your point concisely—and preferably only once.
- **Accurately summarize the facts.** Misstating the record can irretrievably damage your credibility before the court.
- **State the law objectively.** Judges learn quickly whom they can rely on to tell them the current state of the law.
- **Analyze contrary authorities.** If the court later discovers these cases after argument, you will have lost almost all of your credibility.