

**FIRST DISTRICT APPELLATE PROJECT  
TRAINING SEMINAR  
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**INNOVATIVE APPELLATE PRACTICE**

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## ADVOCACY TO ACTIVISM: INNOVATIVE APPELLATE PRACTICE

### **I. Build Strong Relationships With Trial Attorneys, Other Appellate Attorneys, Experts, And Champions To Improve The Quality Of Your Briefing and Your Practice**

The maxim “stronger together,” frequently heard during last year’s political season, has a profound application to developing strong relationships to improve the overall quality of our appellate practice and to achieve justice. These relationships make us all stronger together.

Every call we make to a trial attorney is an important opportunity to forge a strong and lasting partnership, not just for the duration of the current case, but for cases in the future. Experience tells us that collaboration among appellate and trial attorneys provides an extraordinary opportunity to affect positive outcomes for our clients. Through close collaboration, we have learned that appellate and habeas issues are properly investigated and vetted and the impact of critical post-judgment developments are discussed and analyzed. When we receive the next case involving the same trial attorney, we are prepared to work together again.

Building strong relationships among ourselves is also vital. By communicating and collaborating with each other on selected issues, we tap into a vast reservoir of knowledge and talent. We have learned that, drawing from this reservoir, we can accomplish much by way of litigation projects to shape the law and legislation to change it.

We have also found that we can reap great benefits for our clients by working with “champions” (amicus, specialized organizations, and law makers whose interests align with ours). Working with such individuals and organizations, already eager to affect change, makes us a force to reckon with.

### **II. Recruit and Deploy Amici in Selected Cases**

Most of us appellate practitioners are generalists. Even the most knowledgeable and experienced among us find it necessary, from time to time, to seek the assistance of subject matter experts in complex areas of the law. Recruiting amicus assistance in selected cases can make a difference to the outcome of case,

availing the appellate practitioner with a more thorough understanding of the issue and better briefing. It is our experience that amicus participation can also garner more interest from the appellate bench and more trenchant treatment of the issue presented. Rather than just selecting general criminal justice organizations as amici, we suggest reaching out to amici from professional organizations that have something uniquely valuable to say about a given issue. For example, in *Miller v. Alabama* (2012) 132 S. Ct. 2455, 2464, fn. 5, American Psychological Association amici demonstrated that conclusions in psychology and brain science showing fundamental differences between juvenile and adult minds had become even stronger since previous Supreme Court cases on the subject. A decision whether to use amici should happen early on in a given case, given filing deadlines for the application and amicus brief (Cal. Rules of Court, rule 8.200(c)(1)) (discuss this decision with your FDAP buddy).

### **III. Use Developed Expertise To Improve Outcomes For Clients And Shape The Law**

Although we may have begun a case wholly unfamiliar with a particular issue or unschooled in an area of the law, in the end, we may have developed useful, specialized expertise. This expertise should not be wasted.

Our expertise may inform us that a letter requesting publication (Cal. Rules of Court, rule 8.1120(a)) or depublication (Cal. Rules of Court, rule 8.1125) should be filed. We may decide to channel our expertise in drafting an amicus brief in another case, writing a law review article, or joining with other attorneys as part of litigating issues to shape the law in a uniform fashion.

We have found that lawmakers often appreciate our expertise, and are eager to consult with us in drafting legislation. We have learned to collaborate with organizations to achieve passage of legislation promoting justice for our clients.