



# Appellate Practice in Washington (Kunsch)

by Kelly Kunsch

## Introduction

Appellate practice is one of the most critical stages in litigation as well as a cornerstone in the legal process. Not only are the appellate courts where a particular case is decided with finality, these courts also create the precedents that control later litigation.

One component of appellate practice deals with procedure: filing the right documents in the right place in the right format at the right time. Another component of appellate practice is technique: the art of writing and speaking persuasively to the court. There are many resources that discuss both aspects of appellate practice. This research guide focuses primarily on materials for Washington but also provides some references to more general works.

## About this Research Guide

This research guide is not intended to be comprehensive, but rather will list some of the major sources of law in the area and a variety of tools for the researcher to use when confronted with questions involving appellate procedure in Washington. Links in this research guide will take the researcher to information about the resource, and in some cases, will link to full text of the resource. The titles of materials held in the Seattle University Law Library are linked to the bibliographic records in the library's catalog. The title or citation for Web-based materials will be linked to the internet site where those materials or information about them may be found. Some citations may be linked to materials in Westlaw, Lexis, or other databases, including cases, statutes, and law review articles of interest; if so, they may be available only to authorized users.

## Appellate Courts

Washington has two levels of appellate courts. The highest court, the state's court of last resort, is the Washington Supreme Court. The Supreme Court generally sits in the Temple of Justice in Olympia. Occasionally, however, the court will hold sessions at other locations in the state. The Supreme Court of Washington is composed of nine justices elected by voters of Washington. Each justice's term of office is six years. Their terms are staggered so that every two years, some positions on the court come up for election. The Supreme Court's Web site includes a brief history of the Court, biographies of the justices, and the Court's calendar.

[Washington Supreme Court Web site.](#)

The intermediate appellate court in Washington is called the Court of Appeals. It was created by legislative act in 1969. The court is divided into three divisions based on geography. Division One includes the northwest part of the state. The court sits in Seattle. Division Two includes the southwest part of the state. The court sits in Tacoma. Division Three includes the eastern half of the state. The court sits in Spokane. Like the Supreme Court the various panels of the appellate court hold sessions at other locations on occasion. The number of judges on the Court of Appeals (and in each division) are set by statute (RCW 2.06.040). The number generally reflects the population of the geographic region covered.

Washington Court of Appeals Web sites (content varies): [Division I](#); [Division II](#); [Division III](#)

**Biographical Information on the Judges** can be useful if an attorney knows who will be on the panel deciding the appeal. For Washington appeals courts, the [Washington Judges Books](#), KFW505.W37 1998 at Reserve, have information on Supreme Court Justices and most Court of Appeals judges. The [Washington State Yearbook](#) also has some biographical information on the Supreme Court Justices. It includes important contact information for the courts' personnel. It also includes biographical information and practice tips for federal judges (including the 9th Circuit and Western and Eastern Districts of Washington) is located in the [Almanac of the Federal Judiciary](#), KF8700.A19A45. The *Almanac* is also full-text searchable on [Westlaw](#) (database: AFJ).

## Primary Sources

### Statutes

Appellate procedure is largely regulated by court rule. However, constitutional and statutory law surround these rules. [Article IV, section 2, of the Washington Constitution](#) created the Washington Supreme Court. The Legislature has further provided for the Supreme Courts framework in [RCW Chapter 2.04](#). Similarly, the Legislature sets the framework for the Court of Appeals in [RCW Chapter 2.06](#) (links to the Constitution and RCW are to the Municipal Research & Services Center page).

### Court Rules

As previously stated, the primary authority governing most issues of appellate procedure in Washington is the Washington Court Rules. More specifically, the Rules of Appellate Procedure (created by the State Supreme Court) set forth requirements such as time of filing, format of documents, and protocols for brief writing and oral argument. The RAPs are published every year in West Group's [Washington Court Rules - State](#), KFW529.A317A2 at Reserve. The RAPs are also available [online](#) (from the Washington State courts' homepage). [Washington Court Rules Annotated](#), KFW529.A2 at Reserve, includes not only the text of the rules themselves, but also digests of cases and cites to law review articles discussing each rule. The RAPs are also reprinted, analyzed and discussed in [volumes 2 and 3 of Washington Practice](#), KFW80.W32 at Reserve.

Task Force Comments often accompany the text of the rules. These are formal notes made by the Task Force charged with drafting the rules for the Supreme Court. Although the Supreme Court has not formally adopted the Comments, they may be helpful in understanding the intent of a rule. NOTE: At one time, RAP 18.24 explicitly stated the Comments had not been adopted the the Supreme Court. That provision was repealed but the action does not imply that in doing so, the Court meant to adopt the Comments.

## Cases

Cases discussing issues of appellate procedure can be found a variety of ways. Two of the most likely sources are [Washington Court Rules Annotated](#), KFW 529.A2 at Reserve, or [Washington Digest](#), at Reference. In the [Washington Digest](#), most cases will be under the topic "Appeal and Error." The Topic Analysis at the beginning of the Topic may provide useful guidance in finding cases. Alternatively, a researcher can look up the specific issue in the Descriptive Word Index to the entire set. Online searching of full-text databases (such as [Lexis](#) [library and file: WASH;WARULE] or [Westlaw](#) [database: WA-RULES]) is another way to locate cases on appellate issues. The researcher may find it useful to combine the rule number with relevant words to focus the query. Finally, useful cases may also be found in the footnotes to treatises like [Washington Appellate Practice Deskbook](#) or in the footnotes of law review articles.

## Secondary Sources and Practice Materials

### Appellate Practice Generally

[Washington Appellate Practice Deskbook](#), Washington State Bar Association, KFW584.W37 2005 at Reserve, is the most comprehensive work on appellate practice in Washington. This three-volume looseleaf covering all areas of appellate practice in Washington. The text includes references to applicable statutes, court rules and cases. The [Deskbook](#) is roughly arranged in a chronological format, discussing topics as they would arise in the course of an appeal.

Volumes 2 and 3, [Rules Practice](#) of the *Washington Practice* series, by Lewis H. Orland and Karl B. Tegland, KFW80.W32 at Open Reserve. These volumes contain Author's Comments on the Rules of Appellate Procedure as well as Task Force Comments. Also included are cases interpreting the rules (including pre-RAP cases, noted as such). The format is based on the court rules so some appellate issues that do not fall within particular rules may be difficult to find coverage of. Volume 3 contains an Appendix of Forms.

Volume 1, Chapter 15 (in pocket part only), [Methods of Practice](#) of the *Washington Practice* series, edited by Kelly Kunsch, KFW80.W32 at Open Reserve. Chapter 15 on Appellate Practice is written by appellate judge Elaine Houghton and three of her law clerks: James Lynch, Kenneth Masters, and Ramona Witt. The chapter gives a brief overview of appellate practice and offers some advice from the judge's perspective.

[Federal Appellate Practice, Ninth Circuit](#), by Ulrich, Kessler, & Anger, P.C., KF9059 9th F43 1999. This two volume practice guide discusses appellate procedure before the Ninth Circuit (the

federal circuit in which Washington is located). The volumes are written by practicing lawyers and is updated with pocket parts.

## **Briefs and Oral Argument**

[Washington Supreme Court Briefs](#) and [Washington Court of Appeal Briefs](#) are held by the Law Library. Most of the briefs are on microfiche or microfilm and are kept in the Micromedia Room. The briefs are shelved by citation (*Washington Reports* and *Washington Appellate Reports* cite). A few cases are missing but the collection is fairly comprehensive. The arguments and authorities cited in briefs may be useful in making arguments on similar issues. Ask at the Circulation Desk or Reference Desk if you need assistance in finding them. The Law Library also has several years of [Ninth Circuit Briefs](#) on microfiche. The [Gallagher Law Library at the University of Washington](#) has a more comprehensive collection in hard copy.

[The Art of Appellate Brief-Writing and Oral Advocacy in Washington](#), edited by Catherine Wright Smith, KFW48.9A78 at Open Reserve, is specific to the Washington courts. Many of the authors are the same as those of the [Washington Appellate Practice Deskbook](#). Because of this, it is more of a condensed version of that resource rather than one offering alternative techniques and viewpoints.

[Briefing and Arguing Federal Appeals](#), by Federick Wiener, KF9050.W5 1967, shelved on the Fourth Floor, is a standard work on appellate advocacy. Although it was published over 30 years ago, it is still a favorite among appellate attorneys. It is not Washington specific but much of the information applies to the state courts as well as to federal courts.

[Brief Writing & Oral Argument](#), by Edward D. and Joseph R. Re, KF251.R4 1999, on Open Reserve, is now in its eighth edition. That fact alone attests to its popularity and usefulness.

The article by Justice Talmadge, 51 [Wash. St. B. News](#) 21 (cited in full under periodical articles, below) is also useful in preparing for oral argument.

Oral arguments made to the Washington Supreme Court are broadcast live on the Internet by TVW (Washington State's Public Affairs Network). The arguments are kept online so that they can be heard after the original broadcast too. TVW's Web site is: [www.tvw.org](http://www.tvw.org).

## Finding Additional Resources

Supplementary resources in the library's collection can be located by using the [Law Library Catalog](#) of print and non-print resources. The [Catalog Help](#) page will show you how to use the catalog to your best advantage. Using Library of Congress subject headings will help you get an overview of the materials available. Some suggested headings are:

Appellate Courts--Washington (State)

Appellate Courts--United States

Appellate Procedure--Washington (State)

Appellate Procedure--United States

Briefs

Oral Pleading

## Periodical Articles

Law reviews and journals reflect the latest thinking on topical issues. Over a thousand are published in the United States and the law Library receives almost all of them. Abbreviations abound in this area so it is best to ask for help at the law library reference desk. All current periodicals are kept in Open Reserve on the second floor of the Law Library. Older, bound volumes are located on the court level which is reached by the elevator inside the Library.

To find articles on particular topics use either [Current Law Index](#) or [Index to Legal Periodicals](#), both located in Reference. Both titles offer indexes by author, title, subject, case, and statute. For law school students, both services are available on [Lexis](#) (lawrev;lgind for *Current Law Index*) and [Westlaw](#) (database: LRI for *Current Law Index*; database: ILP for *Index to Legal Periodicals*). Non-law Seattle University students can use *Index to Legal Periodicals* through the databases offered by [Lemieux Library](#) or manually in the Law Library.

The following articles are listed because they discuss recurring themes in Washington appellate practice:

Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington rules of Appellate Procedure*. 61 [Wash. L. Rev.](#) 1541 (1986).

Kelly Kunsch, [Standard of Review \(State and Federal\): A Primer](#) (online via Westlaw) 18 [Seattle U. L. Rev.](#) 11 (1994).

Dennis J. Sweeney, [An Analysis of Harmless Error in Washington: A Principled Process](#) (online via Westlaw) 31 [Gonz. L. Rev.](#) 277 (1996).

Philip Talmadge, *Making Your Argument More Appealing*. 51 [Wash. St. B. News](#) 21 (1997).

Hard copy volumes of the above bound periodicals are located on the Court Level (shelved alphabetically by periodical title).

## **Continuing Legal Education Materials**

Every year there are several continuing legal education courses offered on appellate procedure and appellate advocacy. The instructors are often practicing attorneys and judges. Continuing legal education materials may be the first to address new issues in an area of law. The quality of the course materials varies substantially. To find out what topics have been addressed in Washington CLE seminars, look in CLEDEX, KFW61.C54 shelved in Reference.