

Helping Counsel Prepare Persuasive Briefs and Records in Workers' Compensation Cases at the Court of Appeals

Understanding How Judges Review Briefs and Appellate Records

- Appellate judges are generalists, not experts in workers' compensation. Most judges don't have every Industrial Commission form number memorized. Describe the form the first time and then reference by number. *E.g.*, *Campbell v. Garda USA, Inc.*, 785 S.E.2d 443, 446 (N.C. Ct. App. 2016).
- Make key documents easy to locate and read in the record. The printed record is photocopied and scanned by the Court, making images dark and blurry. Take control of the quality of important documents and exhibits by submitting them in a supplement under Rule 18(d)(3) of the Rules of Appellate Procedure.
- Be sure to comply with the recent rule change prohibiting Courier fonts (which look like an old-fashioned typewriter and are harder to read than modern proportional fonts).

Addressing Findings of Jurisdictional Facts

- Understand the difference between the competent evidence standard and the *de novo* review applied to jurisdictional issues.
- Common example of a jurisdictional fact: employee v. independent contractor. *Staton v. Josey Lumber Co.*, 241 N.C. App. 174, 772 S.E.2d 876 (2015).
- Build the record on jurisdictional facts with the *de novo* standard in mind.

Best Practices to Avoid Inadvertent Discovery Violations

- Take the time to ensure counsel understands all information possessed by relevant parties: clients, witnesses, adjusters, third-party administrators.
- For veterans of the Industrial Commission process, discovery might seem less rigorous than in court. Remember that appellate judges may not view it that way. *Campbell v. Garda USA, Inc.*, 785 S.E.2d 443, 444 (N.C. Ct. App. 2016).
- Appellate courts are very deferential to discretionary decisions of "trial courts" and this includes decisions of the Commission and of deputy commissioners.