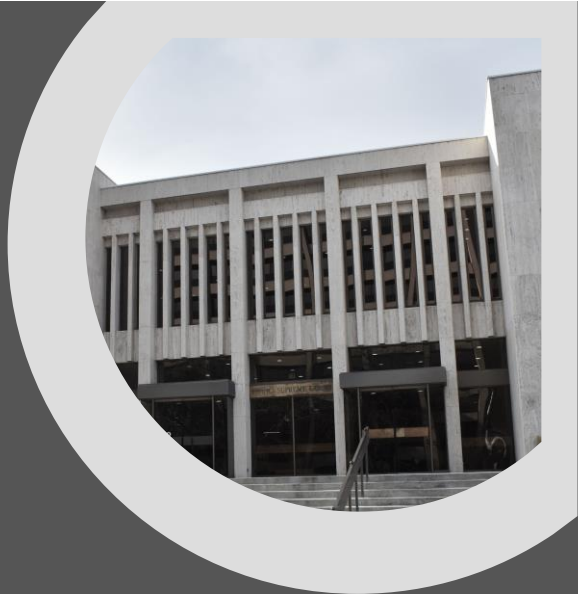


# Welcome to Law Clerk Panel

Sponsored by the Appellate Practice  
Section of the Idaho State Bar



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## What's ahead?

- 1 Brief Introduction
- 2 Law Clerk's Role in Chambers
- 3 The Good, the Bad, the Ugly, and General Tips
- 4 Practical Tips from the Clerk, CoA, and ISC
- 5 Questions

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# The Clerks

Meet the panelists



Samantha Lundberg  
Chief Justice Bevan

Sam is a graduate of Gonzaga University, School of Law. She has been a clerk on Idaho Supreme Court since May 2017, and clerked for both Justice Jones as well as Chief Justice Bevan. Prior to clerking, Sam was an associate attorney for a small insurance defense firm.



Sarah Clemens  
Chief Justice Bevan

Sarah is a graduate of University of Idaho, College of Law. She has been a clerk on the Idaho Supreme Court since July 2021, when she joined as Chief Justice Bevan's clerk. Prior to clerking and law school, Sarah worked as a paralegal



Sean Wilson  
Justice Brody

Sean is a graduate of University of Idaho, College of Law. He has been a clerk on the Idaho Supreme Court since August 2021, when he joined as Justice Brody's clerk. Prior to clerking and law school, Sean worked as a claims adjuster.

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What does a law clerk actually do?



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# Our role in chambers

## Review the Record

Review the record to determine what is included, what, if anything, is missing, and identify the final judgment.

## Read the Briefs

Read parties' briefs, identify issues raised on appeal, and research the law.

## Draft the Prehearing

Draft prehearing for circulation to the Court. The prehearing is the clerk's recommended outcome of the case.

## Watch Oral Argument

Watch the oral arguments and keep notes of issues that may come up during the hearing or notable questions asked.

## Draft Opinion

Once the justices meet after conference and have decided on outcome, begin an initial draft of the opinion.

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Ok, so that's what a clerk does... but any advice for practitioners?



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# The Good...



Give a concise narrative of the case



Distinguish your client's facts from the cases OP cites (rather than ignoring them)



Have an objective statement of facts

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# A few more...



Identify the relief your client wants



Use the Idaho and Pacific reporter



Match your headings to the issues raised on appeal (or at least your conclusions)



Craft your TOC and point headings to create the theme of your case

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What if you are already doing all of these?



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# Now, the bad news



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The Bad...



Not applying the standard of review



Underlining and bolding words excessively



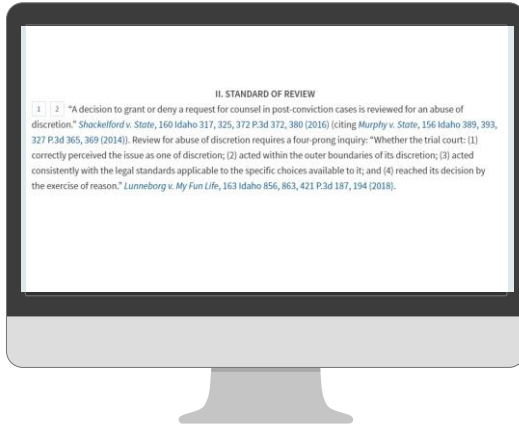
Using nonstandard or extra small/large font



Not including parallel citations

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## Standard of Review

- Not applying the standard of review also means:
  - Using the most recent and accurate standard
- For the abuse of discretion standard, the standard requires the attorney to identify *which* prong the district court allegedly violated.
  - Can be fatal to appeal if not properly applied

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## Not following the rules...



## Idaho Appellate Rules

- I.A.R. 35(a)(2) – Statement of the Case is a *brief* statement of the case explaining the nature of the case, proceedings below, and concise statement of facts.
- I.A.R. 35(a)(4) – Issues presented on appeal “shall fairly state the issues.”
- I.A.R. 36 – Type shall be no smaller than 12 pt Times New Roman.

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But wait, there's  
more...



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The Ugly...



Misstating the law or holding of a case



Including no citations to the record



Misconstruing the other party or the  
district court



Not citing recent authority/Shepardizing cases

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## General tips

- Unless your case is very fact based, it is likely not necessary to recount all the facts from your case during oral argument.
- Use footnotes in your briefs sparingly.
- Read the rules and the cases you cite (they can change/get overturned).
- When arguing to the ISC, you are addressing the Justices. When arguing to CoA, you are addressing Judges.



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## Advice from the Clerk of the Court



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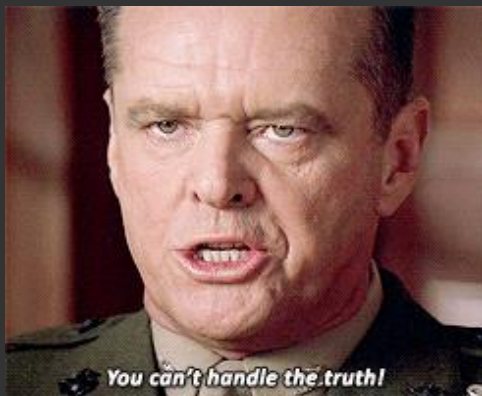
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## Common Issues in Briefs

- Remember to sign *both* the certificate of service *and* the brief. (I.A.R. 11.2(a)).
- Remember to include a certificate of service (I.A.R. 20).
- Do not include name of children in a brief. May use initials or other designation (I.A.R. 35(d)).
- On a sealed case, parties' names should *not* be used. Use "Mother" or "Father."
- Counsel is expected in briefs and oral arguments to keep reference to parties by designation as "Appellant" and "Respondent" to a minimum.
- It is helpful for the clerk's office in a civil case if attorney includes OC's position on a motion for extension of time.
- For questions on citing the record to odd references, just use best judgment, and include a footnote.
- Make sure you file your case into the SC dkt, not DC
- Per IREFC 20(f), briefing must be submitted electronically.

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## Advice from CoA



- In *Doe* cases, remember to cite to the record, not only in the fact section, but also the argument section.
- Do not mischaracterize testimony, or put testimony in quotes if you are paraphrasing.
- Don't just incorporate the district court's decision without explanation or argument.
- If you think there is a weakness in your argument, address it. OA is your chance to convince the Court it is not weak.
  - But concede obviously wrong points if you find them.
- When requesting only your standard record, verify you have the correct documents.
  - If you didn't argue it to the district court, the appellate court won't have a record of your argument to the magistrate court.
- Only include legally relevant facts, and if there are multiple issues on appeal, address the issues in your argument section (CoA preference).
- Do provide supplemental authority even if it is dispositive of the case.

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## Advice from the ISC Justices

- Answer the questions asked
- Prepare to pivot
- Make an elevator pitch
- Do not recount the facts. The Court already knows them
- It's a hot bench; expect questions
- You don't have to use all your OA time
- Recognize a soft ball and catch it
- Oral arguments are a conversation with the Court
- Be prepared to give a holding for the case



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## Questions



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# Law Clerk Panelist Tips

## ***Do***

- Give a concise narrative of the case.
- Have an objective statement of facts.
- Distinguish your client's facts from the cases that the opposing party cites.
- Identify the relief your client wants.
- Use parallel citations.
- Cite to the record.
- Match your headings to the issues raised on appeal.
- Concede obviously wrong points or facts.
- Supplement authority even if dispositive of your case.

## ***Don't***

- Forget to state and apply the standard of review.
- Underline and bold excessively.
- Use nonstandard or extra small/large font.
- Misstate the law or holding of a case.
- Fail to cite to the record or cite to the law.
- Cite old law / not Shepardize
- Misconstrue the other party's argument or the district court.
- Incorporate the district court decision without argument or analysis.

## ***Remember***

- Follow the Idaho Appellate Rules, which include:
  - I.A.R. 11.2(a) – Sign *both* the certificate of service and the brief.
  - I.A.R. 35(a)(2) - Statement of the case is a brief statement of the case explaining the nature of the case, proceedings below, and concise statement of the facts
  - I.A.R 35(a)(4) – Issues presented on appeal “shall fairly state the issues.”
  - I.A.R. 35(d) – Do not include minor children's names
  - I.A.R. 36 – Type shall be no smaller than 12 pt Times New Roman.

## ***Oral Argument Tips***

- Answer the question asked and prepare to pivot.
- Do not recount the facts. The Court and the clerks already know them.
- Be prepared with an elevator pitch of the case. It may be the only time you get before questions.
- You don't *have* to use all your OA time.
- Recognize a soft ball question.