

# INTERVIEW WITH THE JUDGE

A Lawyer and Law Student Talk with Superior Court  
Judge Victor P. Stabile about Legal Writing and Advocacy

By Theodore C. Tanski and Inder Deep Paul

*Author's note: Bryan A. Garner preaches plain English and was the founding editor of The Scribes Journal of Legal Writing, in which he interviewed U.S. Supreme Court justices on legal writing and oral advocacy. Those transcripts inspired me and my summer intern to reach out to Superior Court Judge Victor P. Stabile. He kindly agreed to talk with us about writing and advocacy before Pennsylvania's intermediate appellate court. We can extract an important theme from what he told us — precision. Advocates assist the court. And when we do it with brevity, clarity and power, we best assist the court in reaching the correct decision.*

**Tanski:** Do you enjoy reading legal briefs?

**Stabile:** Briefs are what assist us in the work that we do. Do I enjoy it? Yes, only because I enjoy the work that this court does. I respect the importance of what this court does and appreciate after more than 30 years of practice that on the other side of that brief there's a real person. A life is being affected by the decision in each case. Most of our cases are in the criminal and family-law areas.

**Tanski:** How often after starting to read the briefs can you tell how much work a lawyer may have put into writing a brief?

**Stabile:** Unfortunately, sometimes very quickly. I hesitate to say this, but I think most members of the court probably share my opinion. I would say close to half the briefs we get are not of the quality you would expect from an appellate lawyer. On the other hand, some of the stuff we get is excellent, as you would expect. It really runs the gamut.

**Tanski:** What can bother you the most? A lack of clarity, legalese, maybe grammatical sloppiness or is there something else that is your trigger point?

**Stabile:** At the top of the list is an absolute disregard of the appellate rules of procedure







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The screenshot shows the official website of the Unified Judicial System of Pennsylvania. The header includes the state seal and navigation links for Courts, Judicial Administration, News & Statistics, and Learn. A sidebar on the right lists resources like Opinions, Docket Sheets, and Forms. The main content area displays the profile of Judge Victor P. Stabile, including his term (January 2014 to December 2023), education (Dickinson School of Law, J.D., and SUNY Stonybrook, B.A.), professional experience (elected judge, partner at Dillworth Paxson LLP, deputy attorney general), and memberships (various bar associations and the American Bar Association).

questions presented. I want to know what we are looking at in a case before getting into its substance.

**Tanski:** And what are qualities, to you, that make for an excellent QP [question presented]?

**Stabile:** A properly presented question focuses the court on what your case is about and, ideally, is tailored to the specifics of your case in enough detail that we can immediately understand what is at issue in an appeal. Unnecessary detail tends to lose the point of the question for review. Formulating a question that focuses the court on your case is, in my opinion, somewhat of an art form.

**Tanski:** And what comes next?

**Stabile:** The summary of argument, because it should provide the reader essentially with a large head note or large head notes on the case. When a judge of the Superior Court has to read 45 cases for an argument panel and attempts to find a good synopsis of the case to review before argument, the summary of argument a lot of times can be very beneficial. A beneficial summary that has a very succinct statement of your issue or issues, what the principal legal authority is that supports an issue, why there is error and why you deserve to get relief from the court can be quite effective. You cannot possibly understand all the nuances of an argument by looking at a summary, but a good summary can refresh, focus the reader and get right to the point or points you want the court to understand.

**Tanski:** And what do you think are characteristics of a first-rate statement of facts?

**Stabile:** I think clarity, organization and only those material facts that are necessary to understanding your issue and that you

in terms of what is supposed to be in a brief. Every part of a brief is important. For example, you would be surprised how many times people cavalierly state a basis for jurisdiction that is wrong. We cannot hear a case unless jurisdiction first attaches.

**Tanski:** What is the first thing you read?

**Stabile:** When I open a brief one of the first things I do, after I look at jurisdiction, is to review the question or

believe may be dispositive of your case. Of course, to gain credibility they have to be fairly balanced. Counsel will sometimes try to hedge by leaving out important facts. You then read the opposing brief and find there are important facts that were omitted. Omissions like that affect the credibility of your entire brief.

**Paul:** What facts do you think are material? Isn't materiality a subjective view?

**Stabile:** Not really. Facts drive the issues in your case. For example, we do not need three pages of procedural history if the issue in your case is substantive. Procedurally we need to know how you arrived at the appellate court, but facts should be drawn to the issues in your case. The appellate rules do require you to address both procedural and substantive facts. Of course, putting your material facts in context also is important so the court has a complete story. But are you going to give us the *Reader's Digest* version or are you going to give us an encyclopedia? What is appropriate is a matter of counsel's judgment and skill.

**Tanski:** Shifting gears, what do you wish you knew as an advocate that you now know on the bench?

**Stabile:** Probably an understanding of the immense volume of work that goes through this court. It is not out of the ordinary to read upwards of 1,000 pages a week. I do spend a lot of time in the quiet hours of the morning or in the evening reading and concentrating on cases to stay on top of our volume of cases. Understanding the time constraints upon the court should focus a litigant on the need to be succinct and artfully to draw the court as soon as possible to what is important in your case.

**Tanski:** What about oral argument?

**Stabile:** Here is a point I think many people miss. If you prepare argument properly, you probably spend several days vetting your case, preparing a great outline and perhaps an entire speech. Some counsel become frustrated when they get up to argue and don't have the opportunity to give this great presentation they have prepared. I respect that. I did that many times as an advocate. What counsel needs to understand, in my opinion, is that if the court asks a question, you need to answer the question. If you are being asked a question, in all likelihood the judge asking thinks your answer may affect the disposition of your case or needs clarity for understanding your appeal.

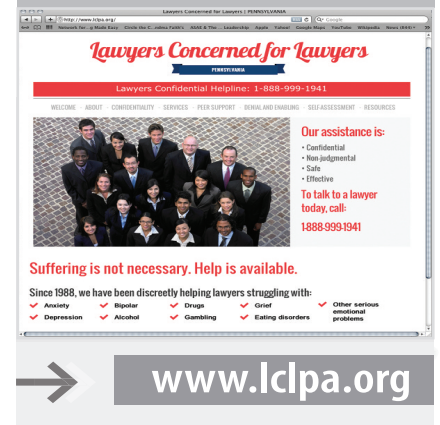
**Tanski:** There was a case I argued in front of you a while back. I came up ready to go on point one and you went right to point three. I said to myself, "That's where we're going, and that's what we're running with."

**Stabile:** Yes. I like to ask questions that I think are dispositive of the issues in cases. I know as a practitioner it was always frustrating to get an appeals decision back and look at it and say, "Gee, if I knew that's what they were interested in I would have loved to have had an opportunity to be asked about that." When the court has questions, don't be offended if you can't give your prepared speech. Do your best to answer those questions directly and with pertinent authority.

**Paul:** Might it be fair to say that sometimes before oral argument the bench has votes in mind or you may ask an attorney to rebut the presumption you or a colleague already has in mind?

**Stabile:** Well, I wouldn't use the word presumption. When we go to argument, yes, most judges, many times, have formed a tentative opinion in your case. We already read your briefs, looked at cases and

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reviewed select parts of the record. It would be unrealistic to assume the court does not have at least a tentative opinion of your case if your brief presents your case well. Now, there are some cases where we say we really need to sort this one out. Then there are others where it's pretty clear where the case is going.

**Tanski:** Can bad writing sometimes lose a strong case and if that's true maybe good writing can win a potentially weaker case?

**Stabile:** Yes, absolutely. The biggest assist that a well-presented brief offers to the court is to direct us to the authority or precedent that might affect or control your case and to relate that authority to your particular circumstances. The better these tasks are performed, the better the chances of succeeding on your appeal.

**Tanski:** Any particular tips on reply briefs?

**Stabile:** I hate to state the obvious, but the best reply brief is strictly a reply. Directly address new arguments or issues raised by the appellee. I reviewed a case recently where the attorney violated our rules 12 different ways to Sunday. Counsel wrote a 72-page brief and in the end of the brief incorporated 17 pages of another brief that he had written. He then wrote an exceedingly long reply similar in nature. It was not effective.

**Tanski:** Do you find that the court goes through a lot of edits with memorandums and published decisions?

**Stabile:** Many times, yes. There's a lot of work that goes into every decision, even a memorandum. It's a memorandum not because you can just crank it out in an hour or two. It's a memorandum because most times a judge believes that it's not something that adds to the precedent or jurisprudence of the commonwealth.

**Paul:** Do you like to stick to the statutory text in your decisions or do you like to go to the unexpressed purpose behind the text, view legislative history and other materials that are not found in the actual language of the statute?

**Stabile:** I would like to think of myself as a strict constructionist. We have a Statutory Construction Act in Pennsylvania where our Legislature has said when you get one of our statutes these are the rules you need to employ in order to ascertain our intent and to interpret statutes. This position as a judge is not a matter of personal prerogative. When construing statutes, you may not pursue intent or spirit when the language is clear. If it is not, then other considerations dictated by the act control interpretation, not your individual beliefs on a law.



**Paul:** I prepare for oral arguments. Obviously, I'm not a lawyer yet, but that's all moot-court arguments. What game plan did you follow as an advocate to be best prepared for oral argument?

**Stabile:** The more preparation the better. If the court doesn't ask questions, you need to prioritize what you think is important and dispositive in your case in order to be able to succeed in securing the relief you are asking for in your appeal. You want to touch upon your major points to see if we have any questions. It's OK to then say, "Unless the court has any further questions, I rest on my brief."

**Tanski:** Thank you, judge, for being gracious and generous with your time. ☺

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Judge Victor P. Stabile was elected to the Superior Court of Pennsylvania in 2013.

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