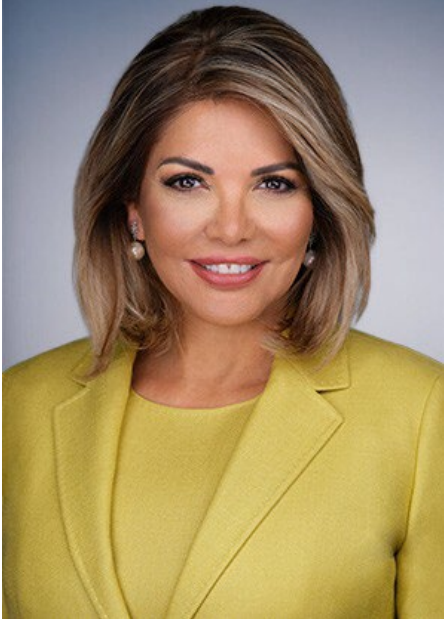


Hiring and working with Appellate counsel



Eva Guzman



WRIGHT CLOSE ■
BARGER & GUZMAN
Civil Trials & Appeals



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Houston, Texas 77056



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Raffi Melkonian

Eva Guzman

Eva Guzman is a partner at **Wright Close Barger & Guzman, LLP** in Houston, where she focuses on appellate advocacy, commercial litigation, arbitration, and mediation in state and federal courts.

Former Justice Guzman began her judicial career in 1999, when Governor George W. Bush appointed her to the 309th Judicial District Court of Harris County. Governor Rick Perry later appointed her to the Fourteenth Court of Appeals in Houston and, in 2009, to the Supreme Court of Texas. She made history as the first Latina to serve on the Texas Supreme Court and the first Latina elected to statewide office in Texas.

During more than two decades on the bench, Justice Guzman ruled on thousands of civil and criminal cases and authored hundreds of opinions. Her judicial writing earned national recognition, including citation by the United States Supreme Court to one of her dissents in a statutory-interpretation case.

A member of the inaugural class of Duke University School of Law's Master of Judicial Studies Program, Justice Guzman studied under distinguished jurists including United States Supreme Court Justices Antonin Scalia and Samuel Alito. Her scholarly work was selected for publication in *Judicature*.

Justice Guzman has long been committed to public service and access to justice. During her time on the Supreme Court of Texas, she chaired the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, working to improve outcomes for vulnerable children and families. She also served as the Court's liaison to the Texas Access to Justice Commission.

Her leadership has been recognized by numerous legal and civic organizations. She has been an elected member of the American Law Institute since 2005. In 2025 she was inducted into the Texas Women's Hall of Fame and in 2026 she was elected to the Philosophical Society of Texas.

A frequent speaker and respected voice in the legal community, Justice Guzman has contributed widely to conversations on appellate practice, judicial leadership, access to justice, and the rule of law.

Raffi Melkonian

Raffi Melkonian is a partner at **Wright Close Barger & Guzman, LLP** in Houston, where he focuses on appellate advocacy and commercial litigation in state and federal courts.

Raffi Melkonian has litigated dozens of Fifth Circuit appeals in commercial matters. This includes *Fort Bend County v. Davis*, 139 S. Ct. 1843 (2019) where he successfully defended the Fifth Circuit's decision in favor of his client before the Supreme Court of the United States. Raffi also has an active amicus practice in the United States Supreme Court, the Fifth Circuit, the Texas Supreme Court, and other courts around the United States. Raffi is an adjunct Professor of appellate procedure at the South Texas College of Law, Houston, and is one of the co-authors of a forthcoming textbook on federal appellate procedure. As part of his practice, Raffi writes about the Fifth Circuit in legal and national publications.

Raffi is a graduate of the University of St. Andrews, the University of Cambridge, and Harvard Law School. After law school, he clerked for now-Chief Judge Jennifer Walker Elrod of the Fifth Circuit as well as Stephen P. Lamb of the Delaware Court of Chancery. Raffi is an elected member of the American Law Institute.

APRIL 2026

Step Basic Steps to a Civil Trial

Appellate lawyers can help at every stage, but the earlier the better.

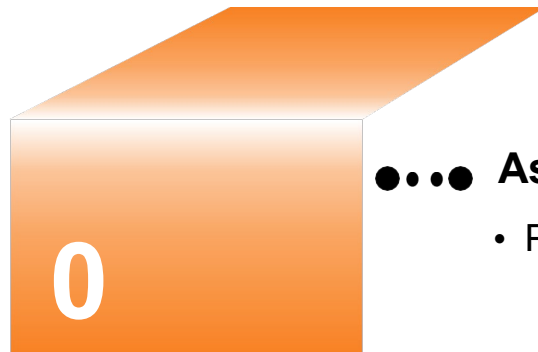


**Appellate Assessment:
Sometimes you just need an honest second opinion . . .**



Using Appellate Counsel – Initial Assessment Stage

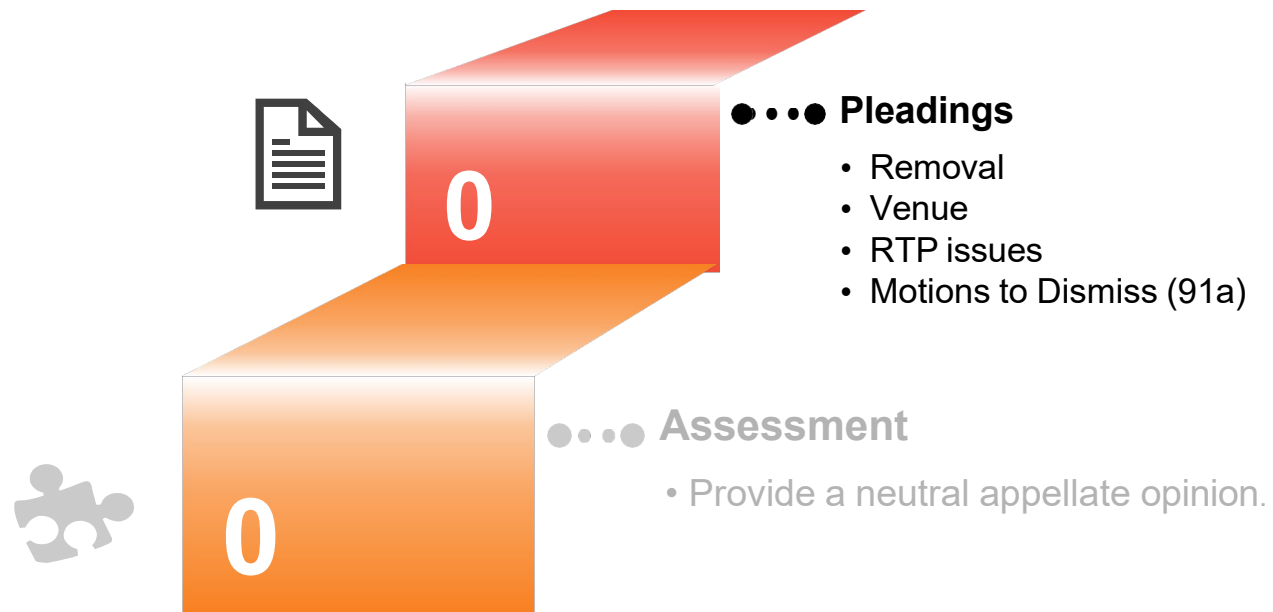
- Legal issues (course and scope, legal duties, allocation of fault).
- Discovery (Apex depositions, net worth discovery, overbroad discovery orders, IMEs, RTP designations).
- Evidence (both keeping the bad stuff out and the good in).
- Spoilation of evidence (alleged or apparent).
- Preserving error in all venues, particularly unfavorable ones.
- Leverage for reasonable settlement.



●●● Assessment

- Provide a neutral appellate opinion.

6 Step Basic Steps to a Civil Trial





Initial Pleadings
Stage of Litigation:
Legal issues that
must be preserved
immediately.



Chapter 72

Bifurcation

2025 Texas Statutes

Civil Practice and Remedies Code

Title 4 - Liability in Tort

Chapter 72 - Liability of Motor Vehicle Owner or Operator

Subchapter B. Actions Regarding Commercial Motor Vehicles

Section 72.052. Bifurcated Trial in Certain Commercial Motor Vehicle Collision Actions

- **Deadline: 120 days after answer is filed or 30 days after the claim is added against the defendant.**
- **Bifurcates trial on driver's liability and compensatory damages from a trial on direct claims and gross negligence.**
- **Applies to PI suits against a defendant operating a CMV or a defendant that owns or leases a CMV that is involved in a collision.**

*****Potential Mandamus*****

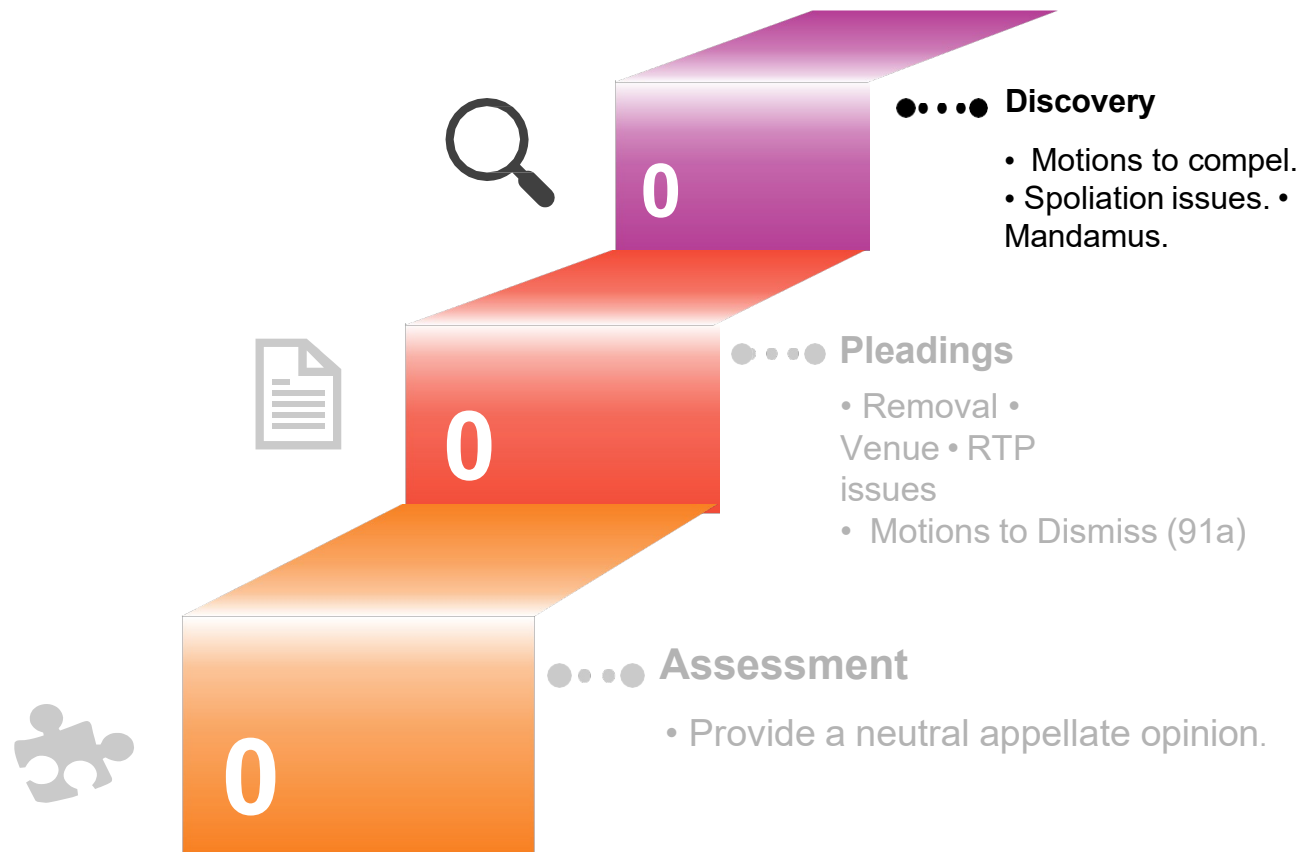
**(Early)
Motions to
Dismiss**

*Appellate
Remedies?*

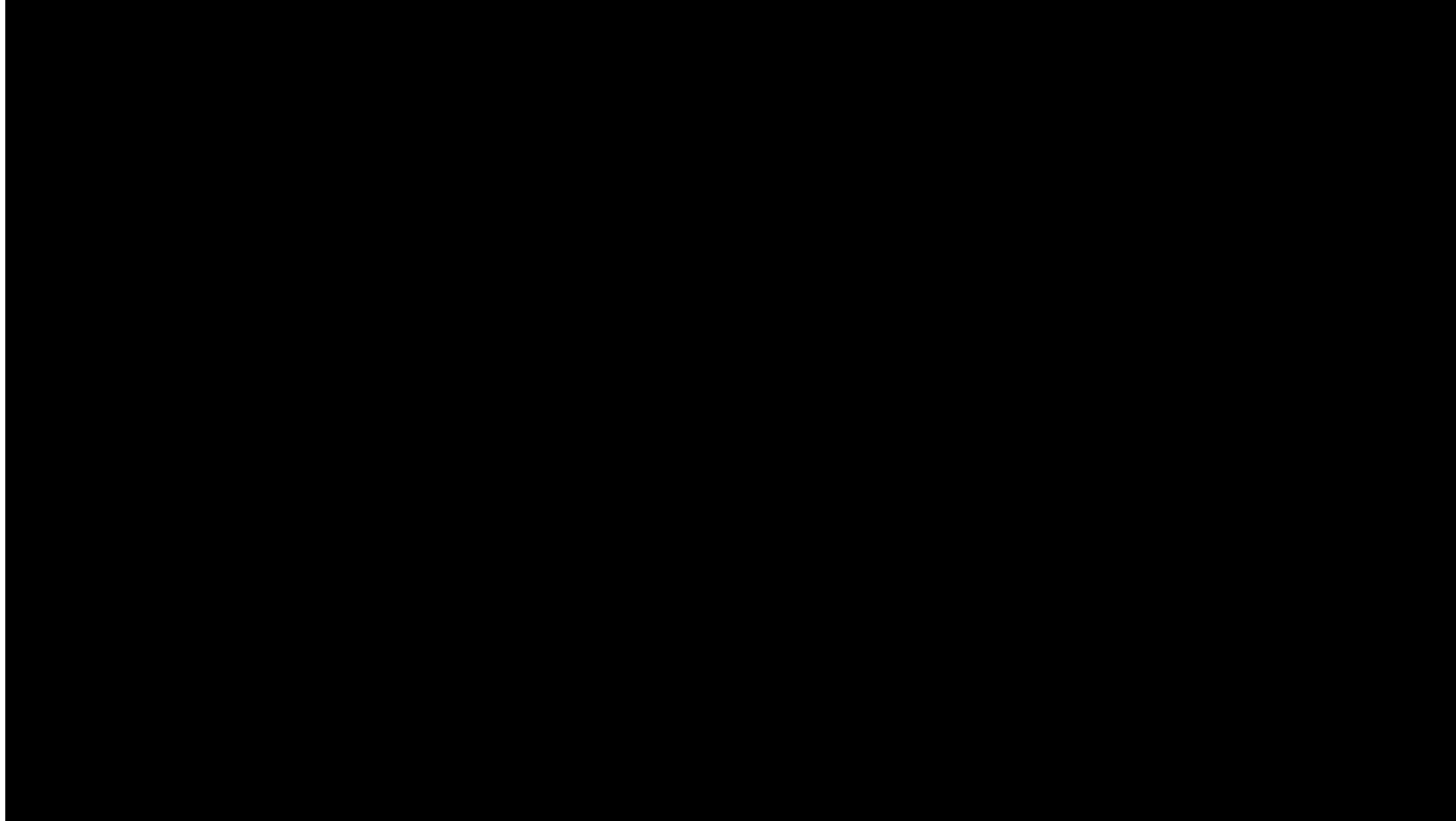
**Federal court has always
had these (12b motions).**

**Texas adopted a rule on
dismissal – if the
pleadings do not support
the relief (91a motions).**

6 Step Basic Steps to a Civil Trial



We assist with depositions & preparing questions



DEPOSITION PREPARATION

- Educate client on tactics and law.
 - Explain broad strategies to witnesses.
 - Explain proper legal standard to witnesses.
- Practice responding to tactics with client.
 - Witnesses should not be overly agreeable.
 - Witnesses should provide truthful, accurate factual testimony.
- Object where appropriate and shut down depositions where necessary.

Case Example: Ellison v. Dawson Geophysical



Overlooked Appellate Issues - Pretrial Tactics



GREYSTAR LIVED UP TO ITS CORE VALUE
OF "HAVING A SAFE AND HEALTHY
WORKPLACE" ON JUNE 9th, 2019.

TRUE

FALSE

hat } c r p r a e r e p r t i a d m i
h a a d u t y t a u d i t t h l g o r i r a n d
f a . 1 t y b e t h d i d n o t a t c h
s y s t e m a t i c f a l s i f i c a t i o n .



as corporate representative admits that she does not want her family on the road with an 18-wheeler driver who has a 74% likelihood of being involved in an accident.



as corporate representative admits
that nothing has changed in regards to shift work or
working consecutive days since children were killed
on May 24, 2020.





Strategies

- **Stipulate to Course and Scope?**
- **Stipulate to Liability?**
- **Move for SJ on negligent hiring, retention, supervision and training claims.**
- **Move for SJ on gross negligence/punitive claims.**
- **Use in limine motions to control rules of engagement – Anti-Anchoring, Anti-Reptile.**
- **Plan counter strategies and test them through Focus Groups and Mock Trials.**
- **Have your “A” team of defense and appellate counsel.**

Mandamus to address discovery issues

- Most jurisdictions have a final judgment rule, so other than a dozen or so types of rulings that the legislature has allowed an interlocutory appeal from, one must have a final judgment to appeal.
- But -- *Mandamus*.
- Can be a sword or shield, for compelling warranted discovery, preventing unwarranted discovery, or staying an order or trial.
- An “extraordinary” writ that is getting more common every day.

Supreme Court of Texas

No. 21-0886

In re Auburn Creek Limited Partnership; The Lynd Company;
Lynd Family Limited Partnership; and Forty Four Eleven, LLC,

Relators

On Petition for Writ of Mandamus

PER CURIAM

Using Mandamus Procedure During Discovery

RTP designations

- Trial court denies motion to designate RTP.
- Mandamus or wait for a final judgment?

Net worth discovery, Apex deposition, IMEs

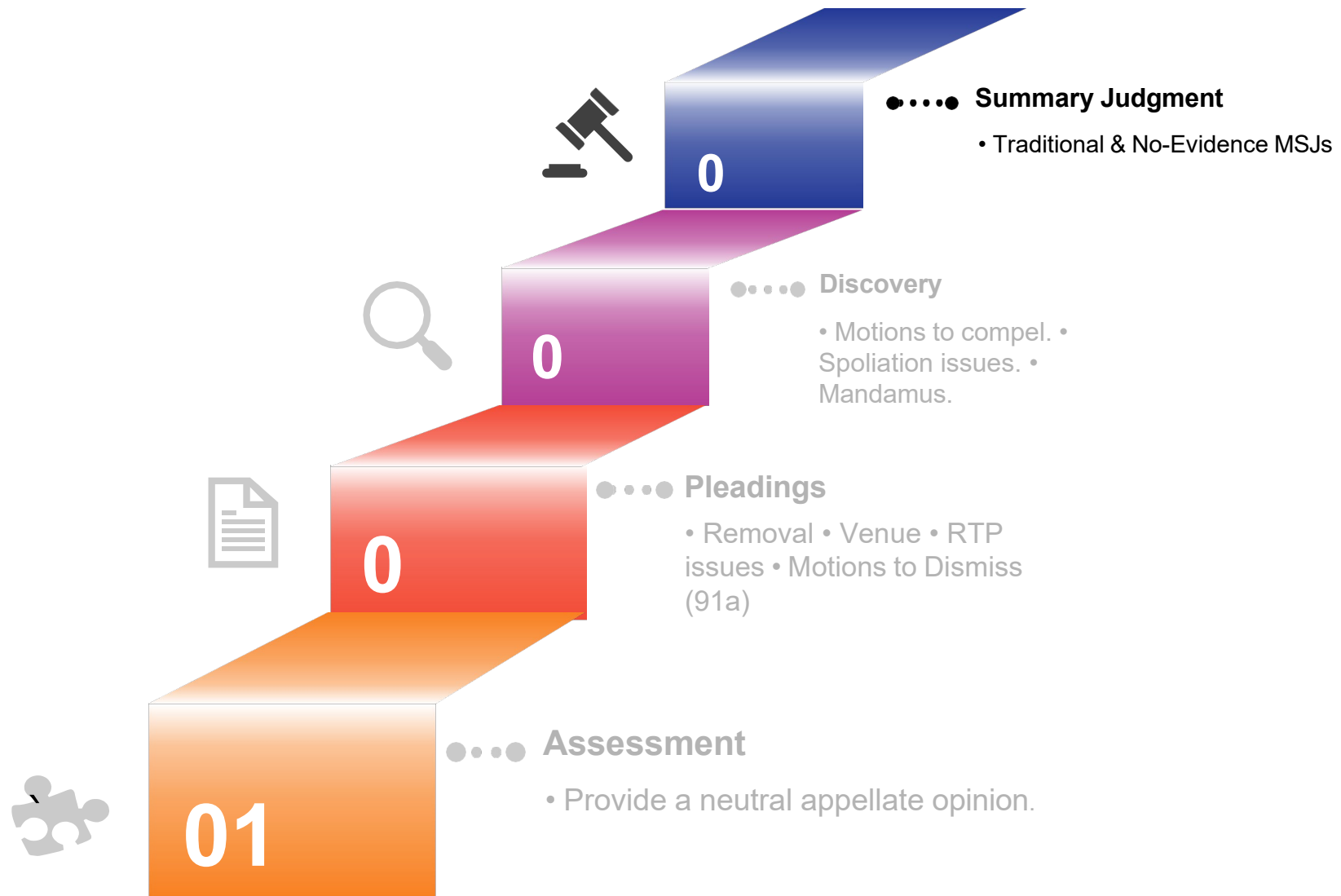
- Net worth discovery. Plaintiff failed to meet his/her burden. Trial court orders overly broad financial discovery.
- Apex depositions. Trial court orders president, CEO, or other apex official to give a deposition.
- IMEs. Scope of examination.

MANDAMUS RELIEF

- Recent cases where appellate courts have granted mandamus relief, including emergency stays of trial, include:

- An attempt to require out of state witnesses employed by D to attend trial.
- A refusal to allow an independent mental exam for plaintiffs claiming mental impairment.
- Various discovery issues.
- A denial of a responsible third-party designation.
- A grant of a new trial.
 - A denial of a motion for forum change.
 - A denial of a jury trial.
 - Striking of pleadings or spoliation sanctions.
 - An order granting an APEX deposition.
 - An order denying a motion to quash a trial subpoena of a corporate representative.

6 Step Basic Steps to a Civil Trial

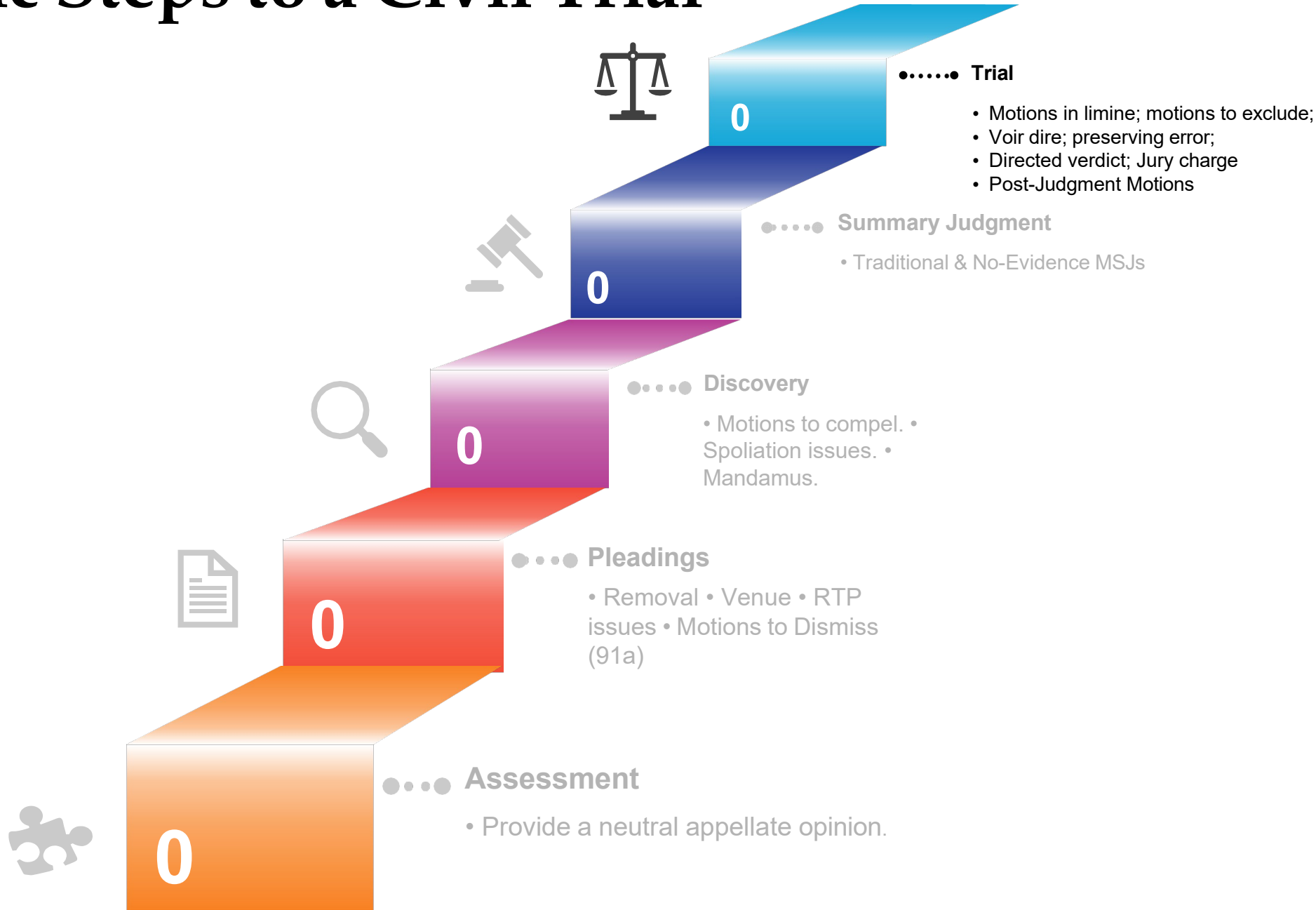


Summary Judgment



- Traditional MSJ
- No evidence MSJ
- Common examples
 - *No duty*
 - *Timberwalk (lack of foreseeability)*
 - *Chapter 95 immunity in premises cases*
 - *Proximate cause (Werner)*
 - *No medical causation*
 - *Admission Rule (direct claims)*
 - *Dram Shop*
 - *Gross Negligence*
- Negotiation leverage at mediation if MSJ is on file

6 Step Basic Steps to a Civil Trial



Error Preservation at Trial



Preservation at Trial

Offers of proof.

Running objections.

Directed verdict.

Jury charge.

Post-judgment motions.



Voir dire



General Aspects of Texas *Voir Dire*

Before *voir dire*, a party can challenge the array (the county's method of juror selection) as not "random."

After a panel is seated, a party can ask for a "shuffle" of the names.

Questioning is usually conducted by counsel, not by the court.

12 jurors in district courts (parties get 6 peremptory strikes per side).
**Need to ask for 12 if you are in county court!*

Overlooked Appellate Issues – *Voir Dire*

- Strikes for Cause
- Peremptory Strikes
- Commitment/Anchoring Questions

ABSTRACT: Numerous studies have shown that the amount of a juror's damages decision is strongly affected by the number suggested by the plaintiff's attorney, independent of the strength of the actual evidence (a psychological effect known as "anchoring"). For scholars and policymakers, this behavior is worrisome for the legitimacy and accuracy of jury decisions, especially in the domain of non-economic damages (e.g., pain and suffering). One noted paper even concluded that "the more you ask for, the more you get." Others believe that the damage demand must pass the "straight-face" test because outlandishly high demands will diminish credibility and risk the plaintiff losing outright.

Countering the Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments

*John Campbell, Bernard Chao, Christopher Robertson, & David V. Yokum**

ABSTRACT: Numerous studies have shown that the amount of a juror's damages decision is strongly affected by the number suggested by the plaintiff's attorney, independent of the strength of the actual evidence (a psychological effect known as "anchoring"). For scholars and policymakers, this behavior is worrisome for the legitimacy and accuracy of jury decisions, especially in the domain of non-economic damages (e.g., pain and suffering). One noted paper even concluded that "the more you ask for, the more you get." Others believe that the damage demand must pass the "straight-face" test because outlandishly high demands will diminish credibility and risk the plaintiff losing outright.

Can defendants effectively rebut an anchor? One strategy is for defendants to offer a "counter-anchor"—a much lower proposed damage award than the plaintiff's. However, defense attorneys worry that juries may interpret such a strategy as a concession of liability. Based on this fear, some defendants allow the plaintiff's anchor to go unrebutted. But this strategy, like counter-anchors, has not been rigorously studied.

To answer these questions, we conducted a randomized controlled experiment in which we exposed mock jurors to a shortened medical malpractice trial, manipulated with six different sets of damages arguments in factorial design.

* John Campbell and Bernard Chao share the Hughes-Ruud Research Professorship at the University of Denver. Professor Campbell is a Lawyering Process Professor at the Sturm College of Law, University of Denver. Professor Chao is an associate professor at the Sturm College of Law, University of Denver. Professor Robertson is an associate professor at James E. Rogers College of Law, University of Arizona. David Yokum graduated from the James E. College of Law and has a Ph.D. in Psychology from the University of Arizona. Yokum is also a Fellow on the White House Social & Behavioral Sciences Team.

We thank Lawrence Friedman, Bryant Garth, Laura Beth Nielsen, Stewart Macaulay, and Joyce Sterling, who sit on the Hughes Research and Development Committee at the University of Denver, which provided both guidance and funding. Thanks also to Jim Greiner and David Schwartz for their thoughtful comments on earlier drafts of this paper. This paper was accepted in the peer reviewed process for the Conference on Empirical Legal Studies, where it also benefited from anonymous reviewer comments and from the discussants.

Jury Charge

- The most common appellate issue in Texas is the submission of the jury charge/jury verdict form.
- In almost every case where jury charge error is raised, the opponent will argue waiver.
- The rules about how and when to object are very complex.

RECEIVED AND FILED
FOR RECORD
At 2:03 O'clock P.M.
MAR 09 2022
Melisa Miller District Clerk
Montgomery County, Texas
By [Signature] Deputy

CAUSE NO. 19-08-11322

SHERI STRICKLAND §
INDIVIDUALLY AND AS LEGAL §
GUARDIAN OF L.D., A MINOR §
Plaintiff, §
§
§
VS. §
§
§
GRAYSON CHARNEY, §
Defendant. §

IN THE DISTRICT COURT
457TH JUDICIAL DISTRICT OF
MONTGOMERY COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Supersedeas Bond

- To stop collection on a judgment pending appeal, you must file a bond.
- It used to be for the full amount of the judgment.
- Now it is limited to the lesser of \$25 million or $\frac{1}{2}$ the judgment debtor's net worth.



(SOME) STRATEGIES APPELLATE COUNSEL CAN ASSIST IN

Targets & Forums

Evaluate removal, jurisdiction, and venue at inception and monitor as case develops.

Pre-trial Tactics

Identify and prepare the right experts/corporate reps, secure all potential evidence, and avoid spoliation claims.

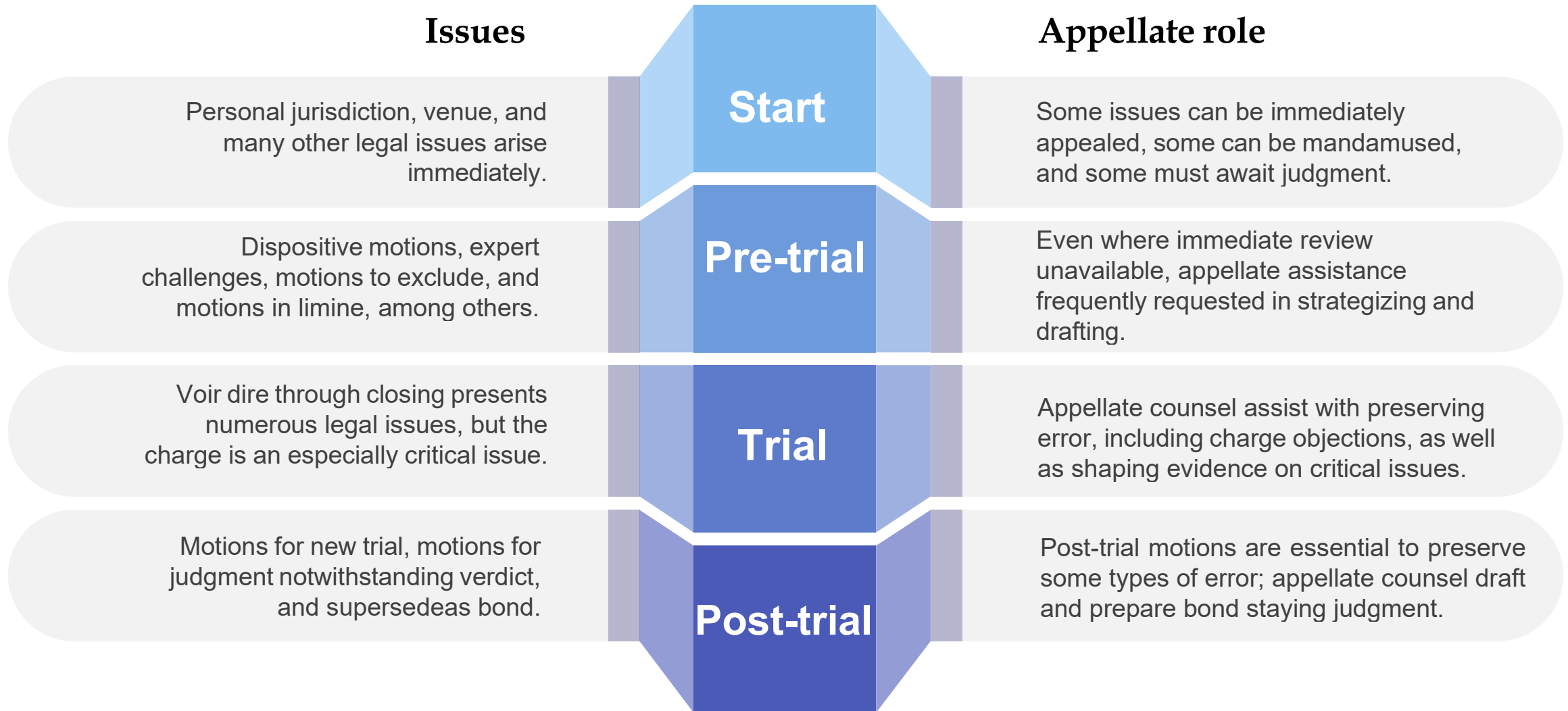
Trial Strategy

Stipulate to course and scope (where appropriate), prepare detailed motions in limine and motions to exclude, and provide reasonable anchors supported by evidence.

Preserve Error

Prepare case for appeal, without waiving error in mere hope of a favorable verdict or settlement; consult appellate counsel from start.

MAXIMIZING APPELLATE ODDS - EARLY APPELLATE ASSISTANCE



Recent Supreme Court opinions and issues you should know about...

Werner Enterprises, Inc. v. Blake (Tex. 2025)

- Proximate cause
- J. Young's Concurrence on Admission Rule

Raoger Corp. v. Myers (Tex. 2025)

- Dram shop liability
- Apparent and obvious intoxication

In re E. Tex. Med. Ctr. Athens (Tex. 2025)

- Employer's right to RTP designation

In re Newkirk Logistics, Inc. (Tex. 2025)

- Death penalty sanctions for alleged discovery abuse

In re Bell Helicopters (Tex. 2026)

- *Mandamus* for denial of summary judgment

Massage Heights Franchising v. Hagman (Tex. 2025)

- Franchisor liability

In re Estate of Lopez (Tex. 2025)

- Admission of former judge's testimony to establish CL marriage

Thank You for Attending!

