

Long Island BusinessNEWS

How To Be More Appealing

by Bernadette Starzee



Michael Re

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Some attorneys just submit a brief and skip the oral argument. Not Re. “My philosophy is to never waive the oral argument – it’s a time to listen to the court’s questions and learn what the critical issues are, so you can use your time wisely and home in on

those issues,” said Re, who focuses his practice on commercial litigation.

Before an appeal, Re outlines what the major points of his case are and what potential questions the court may have. Some questions come as a surprise, but an attorney has to be prepared for those, too. Re was involved in a three-year case in the lower court during which he moved for sanctions regarding his adversary’s conduct three times, but was denied. The case was appealed based on the substantive ruling, and Re represented the respondent.

“During the appeal, one judge was very interested in the conduct of counsel in the lower court,” he said. “It wasn’t the subject of the appeal, but the judge wanted to know more about it, and I had to have a good understanding of the details.” The judge then had voluminous ques-

tions for the opposing counsel regarding his conduct. In the end, the case was settled before the decision was rendered. “The matters raised fostered a favorable settlement for my client,” Re said.

Sometimes, after an attorney submits his brief for an appeal, it can take months before the oral arguments take place. Re said it’s important for an attorney to update his research just before the appeal.

“I have been involved in appeals where the judge asked opposing counsel about a case that happened three weeks earlier, and the attorney didn’t know about it,” he said.