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### Tips for Writing More Effective Appellate Briefs

Brief writing is an important part of an appellate lawyer's job. While much of our time is spent reviewing the record, and identifying and researching the issues, the goal is to present the arguments clearly and persuasively in the appellate brief. This article discusses tips for writing a more effective appellate brief in terms of substance and style.

#### Substance

Keep it brief. A brief should be "brief"—at least to the extent possible. This is particularly difficult for many lawyers. It is the appellate lawyer's job to distill information for the court so that the legal issues are clear and straightforward. No matter how complicated the case, the brief must help the court to wade through the relevant facts and issues on appeal. Appellate judges hear all kinds of cases and may not be experts on the particular subject matter, so it is important to educate the court about the subject matter. At the same time, the brief should be concise. You should be able to make your point within the normal page limits. If you cannot, you need to go back to the drawing board and figure out how to make your point more concisely. I recall a situation where my opposing counsel filed an opening brief well over 100 pages in an environmental case; the introduction alone was 25 pages long. The court of appeal issued a terse order denying the request to file an oversized brief and requiring the appellant to file a new brief that met the word-limit requirement. The appellant ended up having to file a brief that was less than half the size of the original brief.

Use a theme. Develop a theme and weave that theme throughout your brief. With each sentence you write, consider how it supports or relates to your theme. Identify the theme in the introduction (or in the summary of the argument in a Ninth Circuit brief). The statement of facts should highlight those facts that support or are consistent with the theme. In the argument section, bring up the theme again when discussing other cases and policy arguments.

Presenting the arguments. It is generally advisable to present the strongest argument first, although sometimes there is a preliminary issue that should be addressed first instead. For example, if there is an issue about whether the court has jurisdiction, or whether the law at issue even applies, such issues should be addressed at the outset. It is also important to end the brief on a strong note. Leave the "weaker" arguments—if it is necessary to make them—for the middle of your argument section. Choose arguments carefully; resist the temptation to include every single argument that can be raised. Otherwise, your brief may be confusing, overly complicated, too long, and the weak arguments may dilute the strong ones. It is also important to address any anticipated counter-arguments as this shows the court that you have thought about the issues from all angles.

For a great example of an appellate brief that does all of these things, take a look at the Brief for Appellants in the famous U.S. Supreme Court case of *Brown v. Board of Education of Topeka*. (You can find copies on the internet through a simple Google search.) The brief is a mere 13 pages long, including the caption page, printed with the wide margins required for U.S. Supreme Court briefs. The summary of the argument section is just three concise paragraphs: first, asserting that that under the Fourteenth Amendment the State cannot impose distinctions based on race in educational opportunities; second, identifying the injury and inequality that occurs from racial segregation as found by the district court; and third, summarizing why the relevant case law supports the appellants' argument. The brief easily conveys the authors' central message in every section: that segregation of children in public school based solely on race is unconstitutional and harmful to society. The arguments are simply but powerfully stated.

### Style

While style may not be as important as the substance of a brief, poor writing style can significantly diminish the effectiveness of the arguments. Improving writing style can also make a good brief into a great brief.

Spend time on the point headings. Court rules usually require point headings for each argument presented. Failure to use point headings can result in waiver of an issue on appeal, so it is very important to use point headings in the argument section. Point headings are also a great tool for neatly organizing your argument into separate ideas. The reader will often read your point headings first, since they are included in the table of contents. Insert sub-headings where there are discrete sub-issues in an argument; this will make the argument easier to read and understand. If you find that you have several pages of argument without any new point headings, it may be a good idea to break up the argument into smaller parts. Point headings should be persuasive, succinct, and complete sentences.

Citations. In an appellate brief, there should be citations to the record for each and every single fact stated—whether in the statement of facts or elsewhere in the brief—and citations to legal authority for every legal proposition stated. Failure to include proper citations may result in waiver of arguments or even sanctions. Aside from the fact that they are required, citations are incredibly helpful to the judicial attorneys and law clerks reviewing the facts and legal issues in detail to test the assertions made in the brief. When citing to the record, cite to the particular page or pages of the record that support the fact, and when citing to legal authorities, include a pinpoint cite.

General writing tips. Take time to edit, proofread, and constantly work to improve writing skills and mechanics. The final product should be free of errors, comply with all formatting rules, and should look professional. I recommend keeping reference materials to assist with the writing and proofreading process. A good thesaurus can help when searching for the right word to use, and a writing style manual is helpful when you have a grammar or style question. Another way to

improve writing is to reduce the size of sentences. Shorter sentences are easier to read and understand. Similarly, limit the size of paragraphs. If you find yourself with a page-long paragraph, shorten it. A paragraph should relate to a single idea and should contain a topic sentence at the beginning. This sounds very basic, but it is surprising how many lawyers neglect these simple rules.

Microsoft Word has a useful “readability statistics” feature that rates documents for readability. With this option, you can run a grammar check on a document and get a Flesch Reading Ease Score. A higher score indicates material that is easier to read; a lower score means the material is more difficult. You should strive for a score above 40. To improve your score, you can shorten sentences, use active rather than passive voice, break up long paragraphs, and use shorter words instead of longer ones.

Finally, a great way to learn writing techniques is to read examples and practice. You can learn writing techniques from reading cases, newspaper or magazine articles, or literature by paying attention to the writing styles and mechanics used. Then consider how to incorporate these techniques in your own practice.

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