

# **An Attorney's Guide to Effective Brief Writing**

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## **An Attorney's Guide to Effective Brief Writing**

Win or lose. That is the potential result of your brief. The judge may receive your brief and feel compelled to rule in your favor because of your clear application of the law, or he or she may decide that your argument lacks support and rules in favor of the other party. Oral arguments, courtroom etiquette and natural charm do not have as much influence as a well-structured and clear brief. Knowing how to effectively write your brief puts an enormous amount of power in your hands and will likely increase your success rate. Approach the brief in the following manner to write an effective brief every time.

### **Research the Law**

While some cases may be fairly straightforward and will provide the same general framework for a variety of cases, a novel issue may arise or there be particular nuances in this case that were not in previous cases of a similar manner. If you are just starting your legal career or you have no idea what the law is regarding a particular topic, secondary sources may be helpful, such as restatements or law journal information. Research the law that is in the highest court that pertains to the case to see if there is an existing standard regarding the issue in question. Appellate decisions can provide informative language that you can use for a deeper understanding or to support your argument. You can also look at the law in other jurisdictions for persuasive content.

### **Start with an Outline**

Create a simple outline to organize your thoughts. At this point in the process, you do not have to have your statements written in a persuasive manner. The idea is to simply put your thoughts to paper. Consider each element that you must prove and include it as its own section. Then fill in any sub-arguments or counter-arguments to your position.

## **Use a Persuasive Statement of the Facts**

Feel free to flex your story-telling skills throughout this portion of the brief as this is the one portion of the brief that is not riddled by multiple notions of the law or stringent standards. Your statement of the facts section of your brief is the first section that the judge will read. Therefore, it needs to be written in a manner that explains the facts of the case while also including a persuasive tone to influence the judge to see the facts of the case in the light most favorable to your client. For example, if there is a breach of contract claim in dispute, you want to emphasize the facts of the case that show that your client performed his duties under the contract and how the other party breached his or her part of the contract. At the same time, you cannot omit facts simply because they are not favorable to your client. However, you can minimize their effect by using clauses that mitigate their effects, such as saying, "Although Mr. Doe did not make his final payment on the account, the defendant had already breached the contract by not rendering the service within the time provided in the contract."

By using a statement of this nature, you are acknowledging an unfavorable fact of the case while emphasizing the misdeeds of the other party. Using persuasive words can also make this section of your brief more powerful. For example, words like "threaten," "oppressive," "harass," "malicious," "malevolent," "knowingly" and "intentionally" convey a certain tone that can help influence the reader as he or she goes through the brief. Allow some flexibility while writing the statement of facts. While some statements of facts are best presented in a chronological format, some are better if presented in a different manner that emphasizes your client's position.

## **Keep the Standard of Review Simple**

While most sections of your brief should be persuasive, the standard of review is not the place to skew the law in your brief. This section should be concise and simply state the standard of review that the court must employ, such as *de novo* or clearly erroneous.

## **Organize Your Argument**

Now is the time to go back to your outline and to tweak it to your needs. Consider how you want to organize the rest of your argument. The argument is the real meat of your brief and it must be effectively delivered if you hope to have a chance of having the court take your side on the issue in question. One method of organizing your argument is to break the different sections up by the elements of a crime or cause of action. If you are writing a response brief, you can use the point headings provided by the appellant and flip them upside down so that you argue the opposite position as the appellant. Each section should be able to be read and be cogent within its own section without the need to rely on other sections of the argument. You should not have to repeat a main point within two different sections of your argument and doing so may only confuse the reader by extending the discussion of an issue into multiple portions of the argument.

## **Use Descriptive, Yet Concise Point Headings**

The idea behind point headings is that they introduce the reader to the coming content. A reader should be able to read only the point headings in your argument to determine your position regarding each important issue that is part of your argument. Each large point heading should state your position and use supporting facts. For example, state, "The Defendant breached the contract when it failed to complete the drywall portion of the project within the specified time period when the date was a material component of the contract." This type of point heading begins with your client's position, "The defendant breached the contract" and then provides the specific facts that support this position. While you want to provide enough facts in the point heading to notify the reader of the content that will soon follow, you also need to keep each point heading concise enough to be effective.

## **Include Introductions Throughout Each Large Section**

If you have multiple claims, such as breach of contract and bad faith, one section should be drafted for each count. Anytime that your brief divides into multiple subparts, you should have an introductory paragraph or page that explains the different elements that you are about to discuss. So for example, if you have a large section that will break down into four elements and one of the elements has two parts, you should have an introductory paragraph that mentions the four elements. You should also have an introductory paragraph under the text regarding the element with two subparts to identify the subparts before you discuss them. In this manner, you can clearly walk the reader through each major portion of your argument and the reader is not confused by any change in formatting.

## **Organize Your Argument by Following a Framework**

Up to this point in the brief, you have described your client's position and the facts that have led to the litigation. Now, it is the time to really convince the judge and others of the strength of your legal argument. Try this general framework to formulate your argument.

### **1. Conclusion**

Begin your argument with the conclusion. Just as the judge or his or her clerk should be able to read just the point headings to understand your position, the judge and his or her clerk should be able to read the first couple and last couple of sentences of each portion of your argument to know your position and why you feel that way.

### **2. Rule**

Next, you should identify the rule. This may be a statute, a Supreme Court ruling or common law in the jurisdiction where the case is being heard. You may want to include several rule statements depending on the complexity of the issue. For example, you may want to start with a general rule statement that is then followed by any exceptions to the rule or further information that can help justify why your case should fit or should not fit within this mold.

### 3. Explanation

The next section should include an explanation. In some situations, this is the area where you would put legislative history or changes in the law. If there is a circuit split, you may wish to include this information here as well.

### 4. Example

The next portion of the argument should include an example of case law. You want to try to find cases that most resemble your case if they are found to be in your favor. You can also include cases that are different than your case that ruled in the other party's favor concerning the issue. Depending on your needs, you may use an example of a case in a separate paragraph, or you may wish to include the information in a parenthetical citation.

### 5. Analysis

The analysis portion of your argument is the heart of this section. This section can help you compare and contrast your case with the other cases that you have previously cited in the argument section. On cases that work in your favor, emphasize the facts of those cases and how they are similar to the facts in your case. For cases that are different and against your favor, downplay any similarities and instead emphasize how your case should be distinguished from the others. You may also want to use an unfavorable case in this section as a counterargument. In this manner, you can acknowledge the case while providing a direct argument against it in your brief.

### 6. Conclusion

Finish each portion of your argument with a conclusion. This means that under each element, you should have a conclusion. If multiple subparts were included in one portion of the argument, you should use a conclusion that incorporates both sections. You should also have a conclusion for each large section.

## **Use Convincing Language and Tips**

Throughout the entire argument section, you should continually be attempting to persuade the court to rule in your client's favor. Use strong and persuasive words as often as possible. Do not limit your discussion to the simple facts of this case, but rather discuss how a ruling in this case stands for a larger issue or could influence future cases.

## **Educate the Reader**

While you likely know every detail of your case, the reader does not. Your brief may be the first introduction that the reader has to the case. Therefore, it is important throughout the argument section and the brief to continue using the facts of the case and case law to help educate the reader. While you may think that the court will be able to connect the dots in your argument, omitting important facts or references to certain information in the record can be to your detriment.

## **Make Smooth Transitions**

While you may have great legal support for your argument with the case law you cite and you may write in a clear manner, there are still likely improvements that you can make. For example, you may be able to employ more effective transitions by using signal words like "although," "however," "notwithstanding," "furthermore" and "similar to." These words help connect sentences together in a way that make sense. They can also help link paragraphs together so that the reader can clearly see where you are going in your argument.

## **Use References Effectively**

References can help convince the court of your position in the matter. However, you do not want to simply place a reference in every sentence so that you have no personal stake in the writing. Instead, incorporate the references in a manner that integrates the references naturally into your argument. Additionally, do not use stand-alone quotes when citing references. You have to connect the dots for the reader, so use sentences that introduce the direct quote that you use. Another effective method is to find influential language in cases. Even if the overall ruling works against your case, you can still use this language in your rule, explanation and analysis section to further your argument. While compelling language may help your argument in some cases, paraphrasing may work better in other situations. This strategy also helps to emphasize the language that is emphasized in the argument.

## **Add a Succinct Conclusion**

When you have completed all other portions of your brief, add a conclusion. The conclusion page should list your contact information and request that the court rule in your favor. This is not the time to add more information or argument to the brief. Everything that you have already stated should support the final conclusion.

## **Be Precise with References**

Nothing can get your credibility questioned as fast in a brief as not properly citing a reference or claiming that a holding says something that it does not really say. Be sure that you thoroughly read the section of a case that you are pin citing. Make sure that your pin cites are accurate and that they are provided in all necessary areas. Additionally, make sure that you read the content around the pin cite so that you are sure that the context still supports a statement.

## **Analyze the Visual Effect**

When you are nearly finished with your brief, look it over to see if it is aesthetically pleasing. It should look attractive and professional. While you must comply with the court rules regarding formatting, do a double check of the brief before you submit it. Make sure that all paragraphs are indented and line up with each other. You can improve the overall look of your brief by looking at other briefs that were turned into the same court. More than anything, consistency is key. For example, if you add italics to emphasize words, continue to use italics for this purpose throughout, instead of switching to capitalized words or underlining for emphasis. You should also use a font that is set at a 12-point level. Remember that many appellate court judges are up in age and may have deteriorating eyesight and may need a larger font so that they can see the words more clearly. Unless court rules dictate otherwise, you should have one-inch margins throughout the brief. You should also be sure to make point headings that are on the same level have the same type of formatting. For example, if you are on Roman numerals, you may have the point headings in all caps and bolded. For subheadings with capital letters, you may have them in all caps only. This is easiest to detect when you put the point headings in the Table of Contents.

## **Edit, Edit, Edit**

Be sure that you leave plenty of time in the process to allow for ample editing. No first draft should be turned into the court as there is always room for improvement. While the brief will likely be in a computer format, go ahead and print the draft out so that you can more easily see errors, such as not enough spaces after periods or spelling errors. Start the editing process in a general manner by looking at the overall organization. Make sure that your thought process makes sense and that you provide a map for the reader that clearly organizes your thoughts. Make sure that you have identified every main issue and addressed counter-arguments that the other side will likely bring up.

From the general editing, drop down to more specific editing, including analyzing paragraphs and specific sentences. Make paragraphs be approximate to others. Shorter paragraphs are often easier to digest than longer ones. Also, look to determine whether you have a topic sentence for each paragraph. A deeper editing process can help you analyze whether each sentence makes sense under the point heading or if a sentence should be moved to another portion of the argument. Just like paragraphs, shorter sentences are

also easier to digest than longer, wordy ones. Go through the brief with a fine-toothed comb so that you can eliminate all unnecessary information, including unnecessary phrases or redundant statements. Many judges and other readers do not care for block quotes. If it is easier to break up the text into separate clauses, you may want to use this strategy instead. When you have made ample changes, print the brief off again. Read the brief out loud to see if it makes sense and that you are using effective arguments.

### **Add Finishing Materials**

Court rules likely dictate whether you need to add a Table of Contents, Table of Authorities or other documents to your brief. As these materials are at the beginning of your brief, they must be flawless. Make sure that all beginning words line up appropriately. Court rules may require that you have a series of periods after each portion of the brief that is included. However, if there are no such rules in your jurisdiction or if the court provides some flexibility, a table or chart may work better and give a cleaner look. You will also likely need a cover page and a blank ending page. Be sure that the copy you serve to the court lists all of the relevant information and that it is formatted according to the court's directions.

### **Give It One Final Look**

Although you have brutally edited the document, check it over one more time before submitting it to the court. Search for any spelling errors or grammatical mistakes that can put your professionalism or education in question. Make sure that there are no point headings that are left isolated on the bottom of the page and move them to the next page. Ensure that all of your pin cites are correct after you have reorganized the draft multiple times.

Effective legal writing is an important aspect to any litigator's practice. You owe it to your clients to provide effective and clearly articulated briefs on their behalf. The brief that you produce represents you, your firm and the client and should, thus, be given the respect that it deserves.

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