CHICAGOLAWBULLETIN.COM

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MONDAY, APRIL 20, 2015

Chicago Daily Law Bulletin®

Volume 161, No. 76

# How to write appellate court briefs that are, in fact, brief

In my last column on March 19, we began our journey through the process of drafting an effective appellate brief by considering the different standards of review which apply to the issues in the case and discussing the fundamental impact the standard of review has on appellate strategy.

Now that the lens through which the appellate court will view your arguments is understood, the next step is to think about how you will craft your brief and fill those empty sheets of paper — or, more likely, the blank computer screen — with effective and persuasive claims which will resonate with the justices and win the day for your client.

Illinois Supreme Court Rule 341 provides the road map for what must be included in your appellate brief: a summary statement titled "Points and Authorities"; an introductory paragraph stating the nature of the case; a statement of the issue or issues presented; a statement of jurisdiction; a statement of facts; the legal argument; a short conclusion; and an appendix. Each of these parts of the brief will be discussed in detail in upcoming articles.

However, before we drill down into the separate parts of an effective brief, let's consider some global thoughts on brief writing in general.

A good place to start is the following observation made by U.S. Supreme Court Chief Justice John G. Roberts, Jr.: "It's a different experience when you pick up a well-written brief: you kind of get a little bit swept along with the argument, and you can deal with it more clearly, rather than trying to hack through [a poorly written brief] ... it's almost like hacking through a jungle with a machete to try to get to the point."

As highlighted by Roberts, in drafting appellate briefs, the primary goal should be to clearly, precisely and completely communicate to the reader the argument being presented.

The best legal writing clearly sets forth the issue and the applicable law, compares and contrasts the relevant law and facts to your case and methodically leads the reader step-by-step through the legal analysis to the final conclusion.

Remember "IRAC" from your law school days? That concept should be exhibited in full-force in your briefs. In every instance, well-researched and well-written briefs demonstrate that the conflicting issues have been thoughtfully analyzed.

A document that is easy to read will enhance your chances of persuading your reader and winning your argument.

To this end, each sentence must be carefully drafted and scrutinized. Why is it included? What confusion or misunderstanding might it cause? Can it be better written? The brief should say no more and no less than needed, and the document should express ideas as accurately, briefly and clearly as possible, leaving little room for unintended interpretations or guesswork on the part of the reader.

ON APPEAL

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U.S. Supreme Court Justice Clarence Thomas summed it up this way: "The genius is having a ten-dollar idea in a five-cent sentence, not having a five-cent idea in a ten-dollar sentence."

These judicial reactions support the old adage attributed to Mark Twain: "I didn't have time to write a short letter, so I wrote a long one instead."

Of course, the complexity of a case or a voluminous trial record may require submission of a lengthy brief in order to address all that must be raised. Yet, in other instances, an overly long and unfocused brief may result from running out of time to carefully analyze the issues and thoughtfully edit the substance for clarity and conciseness. The lesson learned is to get started on the drafting as soon as possible.

*Often, the justification for one conclusion may disappear while the basis for another may be discovered.*

Also, beware of falling into the trap of believing that a longer brief is always a better brief — sometimes, the opposite is true.

As Roberts has explained: "I have yet to put down a brief and say, 'I wish that had been longer.' So while I enjoy [reading briefs], there isn't a judge alive who won't say the same thing. Almost every brief I've read could be shorter."

Indeed, the ability to clearly convey the ideas in the brief depends upon the organization of the material, the structure of the sentences and paragraphs and the words used.

In the initial drafts, most of us succeed in only getting our ideas out of our head and onto paper, oftentimes in somewhat of a jumble. Usually, early drafts are imprecise and wordy, requiring extensive revision and editing to make them say exactly and only what is intended.

It is the drafting process which forces us to focus upon the facts and the law and during which new ideas may become apparent. Often, the justification for one conclusion may disappear while the basis for another may be discovered.

As we journey through the drafting process, new research and progressive reasoning may require several changes in the direction taken. It allows for the exploration of ideas and encourages the writer to examine alternatives in reasoning while also offering a means to test that reasoning. In discussing the importance of this process, U.S. Supreme Court Justice Samuel A. Alito Jr. underscored the key points:

"The phrase 'It just wouldn't write' ... mean[s] ... that when you have to go through the discipline of actually putting your argument in written form, you see problems with what you had thought out. When you are just thinking about a legal problem, your mind can easily skip over problems. When you have to write it, and if you aim for a tightly reasoned, well-expressed argument, very often that will expose the problems in the kind of argument that you had anticipated you were going to make."

With these thoughts in mind, stay tuned for our continued journey through the brief-writing process in upcoming articles.