**How to Write a Brief**

You’ve read through the fact pattern, statute(s), and case law and now it is time to put your thoughts into a legal brief. When appealing a case, the lawyer is an advocate for his or her client. As an advocate, the lawyer exercises persuasion to achieve results favorable to his or her client in a variety of ways.

In a brief, the lawyer argues for his or her client. A brief is a formal document a lawyer uses both to convince a court that the client's argument is sound and to persuade a court to adopt that position. A brief must state the law, the facts of the case and the reasons for the conclusions in a clear and concise manner. The brief writer is submitting a legal argument to opposing counsel and a judge or panel of judges, all of whom will subject it to close scrutiny. The brief writer must attempt to make the client's position seem as strong as possible, emphasizing favorable arguments and minimizing the force of opposing arguments. It is not enough that the client's position appears logical or even desirable—it must seem compelling.

The brief writer knows his or her basic conclusions in advance. His or her work involves a search for arguments and materials to support those conclusions and that show his or her client's position is stronger and should prevail.

An appellate brief is the document provided to a reviewing court challenging or defending a trial court's decision in a court. Appellate briefs focus more on broad policy because appellate courts are more concerned with establishing and applying rules that work in many situations. An appellate brief contains a statement of the legal issues, a statement of facts, an argument and a conclusion.

The following is a description of each element of a brief:

*TITLE PAGE*

The title page of an appellate brief identifies the court, the docket number, the name of the case, the side represented and the name(s) and address(es) of counsel.

*TABLE OF CONTENTS*

The table of contents lists each element of the brief and the page on which that element begins. In addition, the headings used in the argument section should be stated in the order they appear, with page numbers corresponding to their locations. This outline of your headings provides the reader with a concise and easily understandable summary of your argument.

*TABLE OF AUTHORITIES*

The table of authorities lists all of the legal and other materials used to support the argument in an appellate brief and shows every page on which those materials are cited.

This list of authorities is useful because it permits a judge or opposing counsel to determine quickly what specific cases, statutes or other materials are being examined. It also provides a quick reference for complete citations to any materials used in the brief.

The table of authorities is usually divided into several categories including cases, statutes, constitutional provisions and miscellaneous materials. It also provides a quick reference for complete citations to any materials used in the brief.

*STATEMENT OF LEGAL ISSUES*

This section states the legal issues involved in a brief and alerts the court to those matters you intend to address. These questions should be slanted towards your client's position and should reflect your interpretation of the law. Your brief should project a positive tone; it should argue for a particular conclusion other than simply against the contrary conclusion. If you are appealing from an unfavorable trial court decision, for example, your question might begin: "Whether the trial court erred . . ."However, if your opponent is appealing the same decision, he or she might begin: "Whether or not the trial court properly held "Both questions suggest an affirmative answer.

*STATEMENT OF FACTS*

The statement of facts in a brief is a descriptive account of the facts from your client's point of view. Although the statement cannot omit any damaging facts, it should be written to gain the court's sympathy for an understanding of your client's situation. Many lawyers and judges believe that the statement of facts is the most important section of any brief.

*ARGUMENT*

The argument is the foundation on which the rest of the brief is constructed and is the heart of the brief. Although the statement of facts is important and sometimes decisive, your client generally wins or loses on the quality and substance of what you say in the argument. The argument should be well organized and clearly written. It should be short and to the point.

You should write this section of the brief in forceful and affirmative language, with your strongest arguments stated first followed by your client's position on the issues. You should have a separate heading for each issue you address. Typically, each person will be addressing two issues; as a result, you should have two headings.

*CONCLUSION*

This section describes what you want the court to do. State precisely what relief you are requesting from the court. The conclusion is usually one sentence in length.

*CITATIONS*

Citing a case or other material means simply to refer. Attorneys cite legal authority to help support their legal arguments, primarily by showing the court that the cited case is an example as to how the court or other courts have decided similar questions or issues in the past.

Similarly, judges cite earlier cases in their opinions to support the rules of law they state in the opinion. A citation is like a title of a book or a magazine and provides several pieces of information. For example, one of the most controversial court decisions ever issued is Roe v. Wade, 410 US 113 (1973).

As noted above, when deciding appeals, courts often consider how past cases that involve the same or similar issues have been decided and apply that information to the present case and issues. The earlier cases are known as ‘precedent’. The precedents that past decisions or opinions establish are commonly known as ‘case law’ or ‘common law’. Although different in form from statutory laws, case law is just as binding as a statute. Courts typically follow precedent in order to be consistent with their decisions. Attorneys want to convince the court that other cases have already been decided that way and that precedent has established a rule of law that agrees with their views of the case.