

Paradigme of legal brief

❖ Different sections of a legal brief are:

- ✓ The caption
- ✓ The statement of facts
- ✓ The issue statement
- ✓ The arguments and
- ✓ The prayer for relief

❖ The Caption

- ✓ Gives the parties' names, the name of the court, the title of the document, and the case number
- ✓ Spacing and centering are jurisdictional conventions

❖ The Statement of Facts

- ✓ It contains background facts and legally significant facts
- ✓ Presents the necessary information in a light that is favorable to your client
- ✓ N.B. the purpose of statement of facts in the legal brief (which is subjective) and memorandum of law (which is objective) differs
 - In a memorandum of law, the statement of facts provides only the minimum facts needed to make sense of a situation and how it applies to the law
 - They are presented in an unbiased fashion hence emotionally significant facts would not be included
 - However, the statement of facts in a legal brief presents the necessary information in a light that is favorable to your client
 - In addition to background and legally significant facts, a legal brief should provide emotionally significant fact
- ✓ Selecting Facts
 - **Background facts (explanatory facts):** provide a story of what happened that gave rise to the litigation
 - They should work to convey your theory of the case
 - Persuasive techniques should be used in their presentation
 - **Legally significant facts** are any facts that are legally relevant to the case
 - Ethical rules require advocates to provide all legally significant facts, even if they are unfavorable to your client's position
 - However, an obligation to provide all relevant facts does not equate to an obligation to present them objectively

- you should present relevant facts in a manner that supports your client's theory of the case
- **Emotionally significant facts** are facts which appeal to human emotions such as sympathy, loathing, a sense of fairness, justice, etc
 - Select favorable emotional facts from unfavorable ones
- ✓ Selecting an Organizational Scheme
 - There are generally two types of organizational structures in presenting the facts:
 - Chronological (usual)
 - Presenting facts in chronological order
 - Topical
 - Organizing the facts by topic
 - N.B: the statement of facts generally tells a story that reflects your theory of the case
 - Thus, it makes sense to tell the story by listing events in chronological order
- ✓ Creating a favorable context
 - Many times, the exact same fact can be written in different ways
 - Therefore, advocates should be aware of different contexts they create by expressing facts differently
 - The 'story' that the statement of facts tells in its entirety should create an overall favorable context for your client's case
 - One of the technique is to tell the story from your client's point of view
 - controlling which party is the actor in your statements) active-passive voice choice)

❖ The Issue Statement

- ✓ These are questions that the court must answer
- ✓ They are the lens in which the adjudicator will view your case
- ✓ Try to convince the judge of the proper questions that should be asked
- ✓ The Format of an Issue Statement
 - The "under-does-when" format
 - "Under [the relevant law], should the court [action] when __"
 - The "whether" format, and
 - The multi-sentence format
 - It tells a brief story of the case (in a sentence of two) and then asks the question of what should be done about those facts
 - Note that you should usually use the same format throughout your issue statement

✓ The Persuasiveness of an Issue Statement

- It should be drafted in a manner that suggests to your reader the answer you want
- The issue statement should include reference to legally significant facts along with reference to the rule of law
- The facts should be presented in a favorable light, and suggestive of the merits of your position
 - Example:
 - “Whether the court should grant the motion to suppress evidence when police officers entered the defendant’s home without a warrant.”
 - “Whether the court should deny the motion to suppress evidence when the police officers had reasonable cause to enter the defendant’s home and found contraband hidden inside.”

❖ The Arguments

- ✓ Although the issue statement and statement of facts have persuasive elements, the argument section is the most important part of your persuasive writing as it is the place where you will fully explain why your legal position is the correct one
- ✓ while the statement of facts and an issue statement come before the arguments in the brief, they do not necessarily have to be written before in time
 - it might be advantageous to draft your argument section first, and then draft your statement of facts and issue statement based on the conclusions you reached in the argument section
 - This is because when you draft the argument section, new and unexpected issues may come to mind, or some facts gain more weight than others and as such you may be obliged to be flexible to edit the statement of facts and the issue statement to maintain consistency with your arguments
- ✓ The first step is planning how to order the issues (“macro-level” organization), and then sub-issues under the broad issues (micro-level organization)
 - See the example in the text-pg:49
- ✓ Logically Ordering the Issues
 - Some issues must be established in order for other issues to have relevance
 - So, some legal issues must logically precede others. These are often referred to as “threshold” issues

- Ex: In a civil case of breach of contract, it might be necessary to establish first that the court actually has jurisdiction, or that the statute of limitations has not run
 - Once threshold issues have been dealt with and logic has been considered, put your best arguments first in order to take advantage of your reader's natural attention patterns, followed by weaker arguments
 - A person's attention span when reading is at its peak at the very beginning, then tapers off to a low point, and then increases again when the end is near, although not to the same level as the beginning. This is called the "attention curve"
 - However, if there are many strong arguments, some attorneys prefer to save one of them for the final argument, in order to leave the judge with a lasting impression of the overall strength of the brief, taking advantage of a natural final "jump" in attention given to the writing
- Drafting the Issue Headings
 - Issue headings and sub-headings should be positive statements that affirm, rather than negative statements
 - Ex: "The court should grant this motion because..." rather than "The court should not deny this motion because..."
 - Keep issue headings and sub-headings short and to the point
 - ✓ Maintain the conventions of your jurisdiction with regards to numbering and typeface of issue headings and sub-headings
 - If there are no applicable conventions, at least be consistent
 - ✓ The headings of your brief provide the outline or structure of the argument
 - ✓ They serve as a means to remain organized with your ideas and control over your writing
 - ✓ They act as a convenient locating device for a reader who wants to find a specific legal argument, without having to read through the entire brief
 - ✓ See examples in the text
- Drafting the Arguments
- Strong advocacy is both a science and an art
 - ✓ It is a science because it requires one to maintain precise analytical ability (i.e., an appeal to logic)
 - ✓ It is an art because the analytical process must be presented in a creative and insightful fashion (i.e., an appeal to rhetoric or an emotional element)

- ✓ Good advocates must master both of the above skills
- Elements of an argument
 - ✓ An argument has two main elements: the assertion and the support
 - ✓ Ex: “The court should suppress the witness testimony because it is hearsay.”
 - What is the assertion? What is the support?
 - ✓ Before drafting your arguments, list out all the assertions you will make These should correspond to your issue headings and sub-headings
 - ✓ Then you should list out all the support you have for those assertions
 - ✓ Then You can decide the organizational method to present the argument to your reader such as the IRAC method
- ❖ The Prayer for Relief and Signature
 - ✓ It is the final section
 - ✓ It serves the purpose of requesting the court to the relief that your client wants
 - ✓ The brief must also be signed by an attorney licensed to practice in the jurisdiction
- ❖ Revising for Persuasion
 - ✓ Revise the brief for its clarity and organization and generally for persuasive techniques
 - ✓ Pay attention also to sentence structure, paragraph etc.
 - ✓ Techniques of revision include:
 - Isolate specific segments of your argument from the ‘ground up’
 - Read your entire brief out loud to yourself
 - Have your peers or colleagues revise your work