

# The Winning Brief

100 TIPS FOR PERSUASIVE BRIEFING  
IN TRIAL AND APPELLATE COURTS

Bryan A. Garner

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## A. COMPOSING IN AN ORDERLY, SENSIBLE WAY

- 1 Plan every writing project by breaking it up—and carry it out in stages.
- 2 When first working on a writing project, let the madman run loose for a while.
- 3 Begin the architectural planning by stating the issues. If you write to discover just what the essence of the problem is, be willing to discard everything you've written up to the threshold of discovery.
- 4 Once you've drafted issue statements, read more law and take plenty of notes. Tweak or even rewrite the issues as you continue researching. Then organize the issues from most important to least important.
- 5 Outline your brief, but try using nonlinear before linear outlining.
- 6 Write a draft straight through, without stopping to edit; then let it sit awhile before editing.
- 7 Proof carefully; have several others proof carefully; learn and use standard editing marks.

## B. CONVEYING THE BIG PICTURE

- 8 Frame the deep issues at the outset so that you meet the 90-second test.
- 9 Phrase your issues in separate sentences. Don't start with *whether* or any other interrogative word.
- 10 Limit your issues to 75 words apiece.
- 11 Write fair but persuasive issues that have only one answer. Cast each one as a syllogism. And when you have multiple issues in a brief, preface each one with a concise, neutral heading.
- 12 Weave facts into your issues to make them concrete.
- 13 If you don't open with explicit issue statements, sum up the issues and your theme in a brief "Preliminary Statement."
- 14 Highlight the reasons for the conclusion you're urging.
- 15 Ensure that you've made your points as simple as possible, but no simpler.

## C. MARCHING FORWARD THROUGH SOUND PARAGRAPHS

- 16 Begin a paragraph with a topic sentence. Don't end the preceding paragraph with what should be the next paragraph's topic sentence.
- 17 Bridge from one paragraph to another.
- 18 Connect your sentences explicitly to one another—one after the other. Avoid "bumps" in the prose.
- 19 Ease your readers' way by providing signposts.
- 20 Break up long, complex sentences. Shoot for an average sentence length of 20 words.
- 21 As you progress through a paragraph, avoid tiresome repetitions that hurt the mind's ear.
- 22 Put all your citations in footnotes, while saying in the text what authority you're relying on. But ban substantive footnotes.
- 23 If you must cite in text, make the citations unobtrusive.
- 24 Say something about the critical cases you cite: show how and why they apply. For other cases, be satisfied with a simple citation.

- 25 Use parenthetical case explanations merely to show why you're citing the cases—not to present important parts of your argument.

#### D. EDITING FOR BRISK, UNCLUTTERED SENTENCES

- 26 Relax the tone: eliminate the jargon known as "legalese."
- 27 Avoid overparticularization.
- 28 Put people in your sentences—preferably using real names (not procedural labels) for parties.
- 29 Mentally highlight every *be*-verb, then try to replace it with a more forceful verb—preferably a picturesque one.
- 30 Know what the passive voice is, and minimize it.
- 31 Uncover buried verbs—especially words ending in *-tion*.
- 32 When given the choice between a passive-voice verb and a buried verb, choose the passive voice.
- 33 Eliminate unnecessary prepositional phrases—especially those beginning with *of*.
- 34 Don't separate a short subject from its verb by putting a modifying phrase in the middle; instead, start the sentence with the modifying phrase.
- 35 Don't separate a verb from its object.
- 36 To write forcefully, end your sentences with punch.
- 37 Cut filler phrases such as *there is* and *there are*.
- 38 Eliminate throat-clearing phrases.
- 39 Count your savings whenever you edit out unnecessary words. For example, prefer *claim* over *cause of action*.
- 40 Keep your sentences to one main thought, but combine related sentences if doing so will minimize choppiness.
- 41 Use parallel constructions whenever you can.

#### E. CHOOSING THE BEST WORDS

- 42 When you edit, try not only to cut words but also to replace humdrum phrases with snappy ones that spark interest.
- 43 State your ideas freshly; use clichés only when you can turn them to good advantage.
- 44 Strive for distinctive nouns and verbs—minimizing adjectives and adverbs.
- 45 Save syllables. Shoot for one-syllable words when possible; failing that, aim for two-syllable words.
- 46 Avoid heavy connectors.
- 47 Simplify wordy prepositions: *with respect to*, *as to*, *in order to*, *in connection with*, etc.
- 48 Replace *However* as a sentence-starter: use *But* instead, use *however* internally in the sentence, or collapse the preceding sentence into an *Although*-clause.
- 49 Strike *pursuant to* from your vocabulary.
- 50 Use *that* restrictively, *which* nonrestrictively.

- 51 Fix every remote relative pronoun—that is, ensure that *that* or *which* (the latter preceded by a comma) immediately follows the noun it refers to.
- 52 Resist rabid deletions of *that*. Even so, prefer [verb + *-ing*] over *that* [+ verb].
- 53 Don't use *such* as a pronoun <rejected such> or demonstrative adjective <such property>.
- 54 Use well-recognized symbols and abbreviations, but avoid uncommon ones.
- 55 Generally, dispense with *Mr.*, *Mrs.*, and *Ms.*; use last names alone after the first mention of a party's or witness's name.
- 56 Shun sexist language—both the generic masculine pronoun and the generic feminine pronoun—in a way that does not draw attention.

### F. PUNCTUATING FOR CLARITY AND IMPACT

- 57 Use dashes—not parentheses—to highlight interruptive phrases.
- 58 Hyphenate your phrasal adjectives.
- 59 Otherwise, be stingy with hyphens—especially after prefixes.
- 60 Avoid gratuitous quotation marks and similar typographic oddities.
- 61 Use bullets for lists.
- 62 Use the serial comma.

### G. BECOMING PROFICIENT IN DESIGNING TEXT

- 63 In the argument section, use argumentative headings.
- 64 Format headings with an Arabic-numbered outline system in this sequence: boldface large; boldface; boldface italic; italic. Position all headings flush left.
- 65 Keep headings close to the text to which they relate.
- 66 Put your computer on some sensible initial settings. Create macros that will make the writing easier.
- 67 Indent your paragraphs only four or five spaces. Avoid the puzzlingly common double-indent.
- 68 Avoid all-caps and initial-caps text. But if you do use initial caps, uppercase only the appropriate words—not articles, conjunctions, or prepositions having four or fewer letters.
- 69 Generally, spell out numbers one to ten, and use numerals for numbers 11 and above.
- 70 Use charts, diagrams, and other visual aids when you can.

### H. SIDESTEPPING SOME COMMON QUIRKS

- 71 Never distort the facts or the law. Avoid hyperbole and personality attacks.
- 72 Counter the Rambo writer with the deflating opener.
- 73 Swear off the hence-the-title principle.
- 74 Describe actions, not filings, when possible. And refer to filings generically—not with titles of court papers.
- 75 Avoid voluminous quotations.
- 76 When you have a lengthy quotation, supply an informative lead-in; always assert something first, then let the quotation support your assertion.

- 77 If you can improve on the language of a statute, contract, or case, then paraphrase.
- 78 Abbreviate words as appropriate in case names; know the other elements of correct citation form.
- 79 Shun *clearly* and its allies.
- 80 Use chronology as the main narrative device. For example, in the statement of facts, tell a compelling story by piecing together the evidence. Never recite a witness-by-witness story.
- 81 When narrating chronological events, give relative times—not a series of dates.
- 82 See potential lists and then enumerate ideas in parallel fashion.
- 83 Rid yourself of the common superstitions that will handicap you as a writer.

## I. CAPITALIZING ON LITTLE-USED PERSUASIVE STRATEGIES

- 84 Show, don't tell.
- 85 If you're the appellant or petitioner, choose your grounds of complaint carefully. If you're the appellee or respondent opposing a party who hasn't chosen carefully, rephrase and consolidate the issues.
- 86 If you're the appellee or respondent, draft your brief before seeing your opponent's effort.
- 87 Say it well and say it emphatically. But reject the idea that you should first tell the reader what you're going to say, then say it, then remind the reader of what you just said—that's a speaker's strategy, not a writer's.
- 88 Organize the argument section as a dialectic, so that you deal effectively with counterarguments.
- 89 Even though you lead with your strongest points, conclude powerfully as well. Avoid phrases such as "Wherefore, premises considered," "For the foregoing reasons," and "For the reasons stated"—they make your reasoning vague.
- 90 Make clean, crisp photocopies of the one or two most important cases, highlight up to two inches of text, and bind the cases with your brief.

## J. HITTING YOUR STRIDE AS A BRIEF-WRITER

- 91 Visualize the reader. Assume an intelligent, impatient reader who knows nothing about your case—assume neither an idiot nor a genius.
- 92 Watch out for potential miscues.
- 93 Never write a sentence that you couldn't easily speak.
- 94 Plan on coming in well under the relevant page limit.
- 95 In an appellate brief, always state the standard of review.
- 96 Don't pussyfoot around when suggesting what the court should do.
- 97 If you've shown that the caselaw is on your side, don't stop there: show that the ruling you seek is fair and right under the circumstances.
- 98 Show concern for the court's valuable time—but with more than just lip service.
- 99 Use focus groups to evaluate draft briefs, with mock judicial readings. Do it professionally and objectively.
- 100 Remember the importance of ethos.