



Writing Matters -- Brief Tips

By Robert S. Pearson

In a previous *Writ* article entitled, *Writing Matters*, I tried to persuade you that paying closer attention to the quality of your writing would benefit you as a lawyer. If you're now paying attention, here are three tips to improve your briefs.

Remove the stale opener. Judges are busy. Lawyers say they're sympathetic to this. Yet almost every court paper begins with the same time-wasting opener: some version of "Comes now, so and so, by and through undersigned counsel, and hereby submits this [insert title of the document]." Don't start your court papers this way. The judge doesn't need to be told the title of the document you're submitting or who's submitting it. That information already appears on the caption page just a few inches above. And the judge certainly doesn't need to know that you're "hereby submitting" the document. The document is on the judge's desk; you can rest assured the judge knows it was submitted. If the first sentence of your brief simply repeats what is obvious, you've not only wasted your reader's time but also you've wasted your best opportunity to grab your reader's attention.

Open with an issue statement. Judges read briefs because you've asked them to decide something. They'd appreciate being told – and told fast – exactly what you're asking them to decide. And while appellate courts typically require an issue statement at the beginning of a brief, trial courts typically do not. But trial courts, just as much as appellate ones, yearn to understand your main points quickly. Don't bore judicial readers with a Comes-now opener or, worse yet, plunge them into a heavy statement of facts without first establishing some context. Instead, begin with an introduction or preliminary statement that lays out the specific issues the judge must decide. Putting issue statements up front does two key things: (1) it captures judicial readers' attention because you've given them what they care about, and (2) it enables them to more quickly understand your entire brief. They'll appreciate both.

Write your issue statements syllogistically. We've all learned how to write the one-sentence issue statement beginning with *Whether*. The problem with this method is that it often produces overly abstract or unreadable statements. There's a much better way to achieve clarity and punch: break each issue into separate sentences, and cast the issue as a syllogism. Start with the controlling law (major premise), then the facts that tie into that law (minor premise), followed by a conclusion posed as a question. Subtly slant the conclusion to suggest the answer you want. Here's an example: "Ninth Circuit case law holds that after a final judgment has been entered in a case, a Rule 15(a) motion to amend the complaint may only be considered if the judgment is first reopened. On February 15, this Court entered a judgment against Smith. Smith has now moved under Rule 15(a) to amend her complaint without even attempting to reopen the judgment. Should this Court consider Smith's Rule 15(a) motion?"

Good brief-writing takes effort. Assimilate these three easy tips and your briefs are sure to improve.

About the author: Robert S. Pearson is a litigation attorney with Harlow Spanier & Heckeles, PLLC, and a self-proclaimed Bryan A. Garner disciple. Robert practices primarily in civil and commercial litigation, and also consults on trial and appellate court brief-writing. He can be reached at rsp@reallawtucson.com.




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