

CAFL Appellate Practice Tip



January 22, 2018

Tell them up front why you should win: The art of the Argument Summary

Okay, admit it. You draft your Summary of the Argument last – maybe even the day before the brief is due – and you give it the least attention of any part of your brief. Right?

That’s a mistake. Many appellate judges actually read your Summaries, and a couple have stated at trainings that the Summary is the first thing they turn to in a brief. Why lose an advocacy opportunity? A good Summary can favorably frame your case and explain why the appeal matters.

A good Summary is also a true roadmap of your Argument. It should explain your arguments, including the most important facts, but as succinctly as possible. The Rules expressly state that your Summary *can’t* be a mere repetition of your Argument Headers. Mass. R. App. P. 16(a)(4) (current version) and Mass. R. App. P. 16(a)(8) (effective March 1, 2019). Also, a Summary of the Argument is different than an Argument Header and serves a different purpose. The Header tells you what you’re going to prove, whereas the Summary proves it in a concise fashion. (For more information on writing Argument Headers, see the CAFL [November 14, 2018 Appellate Practice Tip](#) and the CAFL [April 21, 2016 Appellate Bulletin](#).)

Instead, write the Summary as if it were a real condensation of your Argument. How would you explain your Argument to a friend or colleague if you had only a minute or two? You wouldn’t just restate your headers in conclusory fashion; you’d explain why you should win. Give the appellate panel that same, compelling pitch.

When are you required to include a Summary? The amended Mass. R. App. P. 16(a)(8) (effective March 1, 2019) requires that you include a “succinct, clear, and accurate” Summary in “a brief with more than 20 pages of argument, or more than 4,500 words if produced in a proportionally spaced font.” This is less than the current Rule, which requires a Summary if the Argument is 24 pages or longer. Even if your Argument is shorter than 20 pages, you should seriously consider including a Summary. Why pass up an advocacy opportunity, especially if your panel includes a judge who really wants to read a Summary? Of course, if your Argument is incredibly short (just a few pages), a Summary would be silly.

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Remember, your Summary must include page references to where in the body of the brief that argument can be found. Although the Rules don't specifically address case cites in the Summary, and they suggest that you should include record references for facts mentioned in your Summary, the general practice is not to include case cites or record references. But if your Argument is that an issue is directly controlled by a particular case, or there is an outcome-determinative fact, it doesn't hurt to include that case cite or record reference.

Here are some tips for writing a memorable and persuasive Summary of the Argument:

- Draft the Summary after the Argument is done;
- Present the arguments in the same order as in the Argument section;
- Don't include anything that's not in your Argument, but feel free to omit sub-arguments that aren't essential; and
- Include case names and citations in your Summary only if your argument hinges on a particular controlling precedent.

Want some assistance? We have sample Summaries we can send you. Send us an email or call us, at Acohen@publiccounsel.net / (617) 910-5736 or Anarris@publiccounsel.net / (617) 910-4756.