

## **EFFECTIVE BRIEF WRITING**

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### **A. WHAT IS A GOOD BRIEF?**

1. It must follow technical rules contained in the Rules of Appellate Procedure.
2. It must be engaging and compelling.

### **B. TIPS FOR FOLLOWING TECHNICAL RULES**

#### **1. INCLUDE ALL REQUIRED SECTIONS – Mass. R. App. P. 16(a)**

Rule specifies that you must include:

- Table of Contents
- Issues Presented
- Procedural History
- Statement of Facts
- Summary of Argument (if Argument over 24 pages)
- Argument
- Conclusion
- Prayer for Relief
- Rule 16(k) certification (as to compliance with Rules).

There is no rule against adding an "introduction" or subsections of Statement of Facts.

#### **2. FORMATTING – Mass. R. App. P. 20**

The Amended Rules give you lots of formatting choices nowadays, but you still must follow all of the requirements of Rule 20.

Set up a template in your word-processing system with the right margins, spacing, and font.

#### **3. THE RECORD IS YOUR UNIVERSE – Mass. R. App. P. 16(e)**

Every statement of fact made in the brief (whether in

the Statement of the Case/Procedural History, Fact section, or Argument section) must have a record citation. By tradition, the Summary of the Argument does not include record references (but it should be light on facts anyway).

If you've got a lot of facts in your sentence, cite them right away. Don't wait until the end of the sentence.

Conversely, don't mention facts for the first time in your Argument. If they are worth arguing, put them first in your Facts section (or, if they are procedural "facts," in your Statement of the Case/Procedural History).

Don't argue any facts that aren't in your record.

**4. SHORT IS GOOD, SHORTER IS BETTER - Mass. R. App. P. 20(a)(2)**

50-page limit if using a monospaced font (like Courier New). Word limits if using a variable-spaced font (like Times New Roman).

Try for shorter. Judges love brevity.

Keep footnotes to an absolute minimum. Same font and margins.

**5. KEEP IT CONFIDENTIAL - Mass. R. App. P. 16(d)**

No last names of any party. Instead use first names and last initials. Refer to mother as "Mother" or "Ms. J.", father as "Father" or "Mr. P.", and children by their first names.

Don't just use all initials - that's confusing.

Don't use fictitious names (unless you're "back" on appeal after remand and you're using the same fictitious names that the Appeals Court used in the prior appeal).

Put word "IMPOUNDED" on the cover.

**6. FINDINGS AND STATUTES MUST BE ATTACHED AS ADDENDA - Mass. R. App. P. 16(a)(13).**

Paginate them just as they are in the record appendix, for easy reference.

While only the appellant is required to include the findings, appellees should do it, too. Why make the judge reach for your opponent's brief?

**7. BLUEBOOKING**

Judges and clerks notice. Sloppy citation forms and sloppy use of signals make a brief look . . . well, sloppy.

**C. THE ONE RULE FOR WRITING A GOOD "STATEMENT OF CASE" (Mass. R. App. P. 16(a)(6))**

**1. ONLY INCLUDE ESSENTIAL INFORMATION.**

What's essential?

- When case filed
- Where case filed
- When trial held
- When appeal filed
- Custodial changes and current status
- Other key procedural info if necessary to Argument

What's not essential (and shouldn't be in your brief)?  
Procedural history that isn't implicated in your Argument. For example:

- The date counsel was appointed (unless you have an argument about the trial court's late appointment of counsel or denial or counsel, or about ineffective assistance of counsel)
- The date a guardian ad litem or investigator was appointed (unless you have an argument about that person's conduct or report)
- The dates of pretrial conferences or status

hearings (unless something important happened at them and you have an argument about it)

2. **OKAY, THERE IS A SECOND RULE. DON'T FORGET TO CITE TO THE RECORD (which will often be the docket sheets).**

**D. TOP FIVE TIPS FOR WRITING A GOOD FACTS SECTION**

**1. DON'T WRITE BORING FACTS.**

- (a) The vast majority of the time, child welfare appeals are about the facts, not the law.
- (b) Get the judge to rely upon your Facts section by:
  - Being scrupulously accurate.
  - Citing to the record for every fact mentioned.
  - Writing an interesting story that makes the judges want to read it. I you are bored by it, the judges will be bored, too.
- (c) Make your client a person.
  - Talk about the good things, not just problems.
  - Your story should show how hard the parent has worked, how good her relationship is with her child, how DCF treated her poorly.
  - And, how fit she was at the time of trial to care for her child(ren).
- (d) If writing for appellee-child, put up front how old the child is now and how long the child has been in care.
- (e) Write it as a short story - NOT a dry chronological rendering of the trial testimony.
  - Don't tell story chronologically. If necessary, use headings.
  - Use quotes.

*Example of boring, chronological facts:*

Daryl was born on March 12, 2012. His mother is Martha S. The involvement of Daryl's family with the Department began on October 30, 2017. On that evening, Boston Police Officer Ed Gordon found Daryl wandering the streets of Boston all alone. It was cold and raining. Officer Gordon testified that Daryl was dressed only in a T-shirt and was shivering. On October 30, 2017, Martha S. called police looking for her son.

*Would you rather read that, or this?*

Cold, wet and all alone, five-year-old Daryl wandered the rainy streets of Boston on the evening of October 30, 2017. Officer Ed Gordon spotted him huddled in a doorway. "He was shivering so hard he couldn't talk to me," Officer Gordon said. "It was 40 degrees out and he had only a ripped t-shirt on." Seven days went by before Martha S., Daryl's mother, called police looking for him.

*No rules prohibit you from making your facts a more engaging story. Just remember to cite to the record for each fact.*

**2. EDIT, EDIT, EDIT!**

- (a) If your Facts are longer than your Argument, cut them down drastically.
- (b) Every fact belongs in your brief only if there is a reason.
  - Favorable to your client's position
  - Important background
  - Difficult/damaging fact must be dealt with
  - Needed for your argument

**3. DO NOT ARGUE, EVALUATE OR OPINE IN THE FACTS SECTION**

In the example in 1 above, I could have written:

*"Unbelievable as it may seem, seven days went by before Martha S., Daryl's mother, bothered to call police looking for him. Why?"*

That will just send the panel to your opponent's brief for the real facts.

Better: "Seven days went by before Martha S., Daryl's mother, called police looking for him."

#### **4. DEAL WITH DIFFICULT FACTS ARTFULLY**

You must address bad facts, but you can lessen their impact by dealing with them artfully.

- (a) Less detail is good.
- (b) Pair a bad fact with a good fact.

*Let's say bad fact is mother late for ten visits.*

Example: "Although mother was late to ten of her visits, every one of her visits went well and the children were always happy to see her".

*If you represent the appellee-child, and the "bad" fact is that Mother attended all 50 supervised visits scheduled by DSS.*

Example: Mother attended supervised visitation.

*Or*

Example: While mother attended supervised visitation, she never provided drug screens or gave DSS her home address as required by her service plan.

- (c) Bury the bad fact in the middle of a sentence or, better yet, in the middle of a paragraph.

#### **E. FOUR TIPS FOR WRITING A GOOD ARGUMENT SECTION**

- 1. **BE CONCISE - CAN A JUDGE FOLLOW YOUR ARGUMENT IF SHE IS READING IT ON THE TRAIN HOME?**

- (a) Short sentences, short paragraphs.
- (b) When in doubt, cut a complicated sentence into two or three smaller ones.

**2. DON'T BE TOO "LEARNED"**

- (a) No string cites for basic propositions. Judges gloss over string cites. Pick the key case (or a recent case) for your proposition.
- (b) If you must cite more than one case, use a parenthetical to explain why each cite is relevant and important for the judge to read.
- (c) No big blocks of boilerplate law. Do not cite to pages of "governing law" divorced from the facts of your case. Judges gloss over it. Instead, weave the law into your argument.
- (d) No block quotes unless absolutely necessary. Readers' eyes skim or skip them. Why include anything in your brief that a judge will skip? Instead, just quote the key portion of the case/statute/regulation within a sentence.

**3. FOR APPELLEES, RESPOND TO EVERY ARGUMENT MADE BY APPELLANT.**

- (a) Respond even to "stupid" arguments. You never know.
- (b) Re-write the appellant's argument (in your own words) if it isn't clear, then respond clearly to it. The judges will thank you.
- (c) Even if appellant-parent doesn't argue this, always include an argument that:
  - Any error is harmless; that is, if the appellant is write about the trial judge's mistake, it doesn't matter
  - The judgment of the trial court is based upon clear and convincing evidence of parental unfitness, and
  - Termination of parental rights is in the

child's best interests.

**4. DON'T NEGLECT THE SUPPORTING CAST (Rule 16)**

- (a) Make sure Table of Contents is accurate! (Rule 16(a)(3))
- (b) Write a descriptive, compelling Statement of Issues (see memo on how to make the Issues/Questions Presented more compelling) (Rule 16(a)(5))
- (c) Summary of the Argument (Rule 16(a)(8))
  - Required if Argument longer than 20 pages.
  - Include it anyway, even if don't have to. Some judges look at it first. Why pass up an opportunity to make a concise, persuasive pitch that you should win?
  - Summary of Argument is not just a collection of your Argument headings. (That's not our rule of thumb - it's in the Rules!) You should really summarize each part of your Argument. The Rules require that you include cites to the appropriate pages of the Argument that you are summarizing.

**F. CONCLUSION and PRAYER FOR RELIEF**

Start your Conclusion (Rule 16(a)(11)) with a short, thematic paragraph explaining why you should win. Then, in your final paragraph, specify what relief you are seeking, particularly if you are looking for something complicated. Don't put yourself in a position where, at oral argument, a judge has to ask you, "Counsel, let's say we agree with you - what do you want us to do?" Make that clear in your Conclusion.