

Judge Ranjan's brief-writing preferences

I appreciate well-written briefs. To that end, you may wish to consider some of my preferences, noted below.

1) **Active Voice.** Write in short sentences, with plain language, and use the active voice.

2) **Topic Sentences.** Each paragraph in your brief should start with a strong topic sentence, advocating your affirmative point. For example, don't start a paragraph by reciting the law (that should come after the topic sentence), and don't start it by saying what the other side argued (again, that should come after the topic sentence).

3) **Brevity.** Be brief. If you are butting up against a page limit, then that presents an opportunity to revise.

4) **Block Quotes.** Avoid block quotes.

5) **Adjectives and Adverbs.** Strive to eliminate these. Similarly, keep rhetoric in general to a minimum.

6) **Introduction.** The introduction is a critical part of your brief. Your introduction should be 1-2 pages and be a clear roadmap of the entire brief, laying out your main points in a succinct fashion. Don't waste space in your introduction with throat-clearing formalities (e.g., "Here comes Plaintiff, by her undersigned counsel...").

7) **Your Opponent.** When describing the other side's arguments, please use respectful language. For example, say "the plaintiff's argument is not well-taken," not "the plaintiff's argument is meritless, non-sensical, and disingenuous." Out of respect, when referring to an individual party, please consider calling him "Mr. Smith," not just "Smith." Also, don't personally attack opposing counsel.

8) **Legalese.** Do not use Latin or legalese; this includes words like "arguendo," "infra," and "supra." The only exceptions are where the names of a claim, defense, or doctrine are in Latin and there is no English substitute (for example, "negligence per se," "ex post facto violation," "motion to reinstate nunc pro tunc").

9) **Abbreviations.** Avoid abbreviations and defined terms. A brief is not a contract. For instance, if you represent Winston Steel Company, Inc. just say “Winston” in the brief. You don’t need to define it as Winston Steel Company, Inc. (or “Winston”), and definitely don’t abbreviate it with an ugly-looking acronym, like “WSCI.” In this same vein, try not to call parties “Plaintiffs” or “Defendants,” and instead use proper names, if possible.

10) **Know Your Standard.** The standard of review governing your brief will dictate how your arguments are framed. For example, if you are writing a brief in support of a motion to dismiss, you shouldn’t say things like, “Plaintiffs cannot prove X.” A motion to dismiss tests the sufficiency of the pleading, not the proofs—so, instead, you would frame your argument like, “Plaintiffs failed to plead X.”

11) **Case Analysis.** Avoid excessive case analysis. Instead, make your point, then cite relevant cases with parenthetical explanations immediately after for support. I prefer direct quotations from the opinion to one-sentence summaries that you generate yourself. If there is an important case that needs to be discussed, emphasized, or distinguished, then you can engage in discussion of that case. This should be done sparingly, and only if the case is directly on point or if it is featured prominently in your opponent’s brief.

12) **Citation Form.** Follow the Blue Book as a guide, but interpret it in a reasonable manner. Don’t be a slave to it, especially on abbreviations. Just try to be rational and internally consistent in how you cite things.

13) **Headings.** Use short headings, and minimize the use of subheadings. Be consistent regarding the format of headings (some people initial cap certain words in headings, some people use all lower case; it doesn’t really matter, so long as you are consistent. The popular trend is toward no initial caps).

14) **Visual Tools.** Use visual devices and tools to make things easier on your reader. In this regard, paragraph breaks are critical; break your paragraphs up, and avoid a paragraph that is more than a half-page long. Additionally, where appropriate, use organizational devices like numbering (“first,” “second,” “third”); bullet point lists; charts and graphics; and timelines. For example, in a case where the timing of events is critical or convoluted, consider creating a timeline in the fact section.

15) **Typos.** Your brief should not have typographical errors. This also includes formatting nits (e.g., are all your apostrophes “smart” ones, or do you have some “straight” ones peppered in from when you copied and pasted a case cite?)

Do you have hanging headings? Did you inadvertently paginate your certificate of service?).

16) **Protect your reputation.** Your brief is part of your reputation. Substantively, that means don't stretch your arguments, play fast and loose with the record or the law, and do other things that undermine your credibility. Aesthetically, you should strive to have a professional-looking brief. Subject to any required rules, you should think about selecting handsome fonts and font sizes, how your cover page looks, and other details that make your brief look professional.

17) **Footnotes.** Try to avoid or minimize footnotes. If you want to challenge yourself, write a brief with no footnotes.

18) **Grammar.** People have different views on grammar. Your use of grammar should be defensible. For example, some people add one apostrophe to the possessive for "Mr. Jones' car." Other people add an extra "s"—"Mr. Jones's car." I add the s, and can defend it based on the grammar rules of Strunk & White.

19) **Sections of the Brief.** Consider whether your brief needs certain sections. For summary judgment briefs, your brief may not need a section on the standard of review, since all judges are familiar with that standard. Or, for a motion to dismiss, your brief may not need a fact section (or may just warrant a very brief summary of the facts) if the facts are apparent from the complaint and otherwise are raised in the context of your argument section.

20) **Reply Briefs.** Reply briefs are different than principal briefs. A good test for a well-written reply brief is that someone should be able to read your reply brief and understand the critical aspects of the case. A reply should briefly restate key principal arguments; point out important weaknesses and concessions by your opponent; and respond to important arguments raised by your opponent. It does not have to be exhaustive and does not have to address every single point or case raised by your opponent. If your opponent cites a number of cases, consider finding a few common distinguishing points to deal with them all together.