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Tips for Writing Persuasively in Appellate Briefs Beyond the Argument Section

When crafting an appellate brief, the focus for most lawyers is the arguments section, which aims to present compelling legal reasoning and precedent. But persuasive writing should permeate all sections of the brief, not just the argument. Other brief sections—the introduction, statement of the case, statement of facts, and summary of the argument—offer strategic opportunities to shape the court’s perception of the case and favorably frame the issues.

1. Introduction: Capturing Attention and Setting the Stage

The introduction is the first impression the court has of a client’s position. A well-crafted introduction can frame the narrative and guide the judge’s expectations.

- **Be concise and compelling:** Use this space to concisely articulate what is at stake. Present the overarching theme or policy issue that underlies your case. Avoid legalese and focus on telling a succinct story that resonates.
- **Highlight the core issue:** Clearly state the pivotal question the court must address. This helps set the focus for the brief and primes the reader for the argument to follow.
- **Create a roadmap:** Where space permits, briefly preview the main arguments to give the court a sense of the structure and flow of the reasoning. This can underscore the cohesiveness of the brief.

2. Statement of the Case: Providing Context with Precision

The statement of the case offers a factual and procedural backdrop, but it can also subtly advocate.

- **Emphasize key favorable facts:** While maintaining accuracy, highlight facts that support the upcoming argument. Place these details at the beginning of paragraphs or in sentences where they are more likely to stand out.
- **Be selective, not exhaustive:** Focus on the facts that matter most to the legal issues on appeal. Avoid cluttering this section with irrelevant details, which can distract from the key issues.
- **Frame the procedural history:** Describe the procedural posture accurately in a way that subtly shows the fairness of the client's position. If the lower court erred, show this without being overtly argumentative.

3. Statement of Facts: Crafting a Persuasive Narrative

The facts section should tell a story, setting up the legal arguments with a clear, factual foundation.

- **Use storytelling techniques:** Present the facts in a logical fashion to create a narrative flow. This section is often organized chronologically, but facts may also be grouped thematically by topics. Highlight tension points and resolutions that align with the argument—this makes the reader more invested in the outcome.
- **Use defined names for the parties:** Do not refer to the parties as “Appellant” and “Appellee.” Give them defined names, and consider using names or terms that have positive connotations to describe your own client.
- **Use active voice and positive framing:** Use active voice to attribute actions directly, and frame the client's actions positively. For example, “The plaintiff timely filed all required documentation” is more effective than “All required documentation was filed by the plaintiff.”

- **Be objective, yet strategic:** While the statement of facts must remain objective, the selection of detail, emphasis, and word choice can subtly advocate. Use vivid and descriptive language for helpful facts but neutral and abstract language for unhelpful ones. Omit unnecessary facts that might detract from your narrative.
- **Draw the sting from negative facts:** Proactively address unfavorable facts by placing them in appropriate and favorable context. Failure to acknowledge or mention harmful facts that your opponent will highlight may adversely affect your brief's credibility.

4. Summary of the Argument: Distilling the Core of Your Persuasion

The summary of the argument is your chance to succinctly encapsulate your key points, guiding a reader's understanding before diving into the full argument.

- **Be direct and assertive:** Articulate the main points in a concise and confident manner. This is not the place for hedging or ambiguous language.
- **Use logical structure:** Follow the structure of the full argument, summarizing each point briefly. This provides a framework that helps the court more easily follow the reasoning in the argument section.
- **Echo the introduction:** Reinforce the themes or issues raised in the introduction. This creates continuity and highlights those points.

5. Conclusion: Reinforcing the Desired Outcome

Though often formulaic, the conclusion is an opportunity to reinforce a persuasive message and call for a specific ruling.

- **Restate the relief sought:** Clearly and confidently restate the precise relief that the brief seeks. Avoid vague language.

- **Emphasize fairness and justice:** Frame the request for relief in terms of fairness or justice.

Final Thoughts

Persuasive writing and advocacy are not limited to the argument section of an appellate brief. Every part of the brief, from the introduction to the conclusion, can and should contribute to the overall persuasive strategy. Crafting each section with a clear, consistent, and compelling narrative enhances the likelihood that the court will view your arguments favorably.

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