

Participants:

Bryan Garner, Law Prose

Honorable Diane Wood, Chief Judge, U.S. Court of Appeals, Seventh Circuit

Making Your Case: The Art of Persuading Judges

By: Justice Antonin Scalia and Bryan A. Garner

Briefing (p. 57)

Introduction

28. Appreciate the objective of a brief (p. 59)

Preparatory Steps

29. Strengthen your command of written English (p. 61)
30. Consult the applicable rules of court (p. 64)
31. Set timelines for the stages of your work (p. 66)
32. In cooperation with your opponent, prepare the Joint Appendix (p. 68)

The Writing Process

33. Spend plenty of time simply "getting" your arguments (p. 69)
34. Outline your brief (p. 70)
 Opening Brief (p. 71)
 Responding Brief (p. 71)
 Reply Brief (p. 73)
 Petition for Discretionary Review (p. 75)
 Response to a Petition for Discretionary Review (p. 79)
35. Sit down and write. Then revise. Then revise again. Finally, revise (p. 80)

Architecture and Strategy

36. Know how to use and arrange the parts of a brief (p. 82)
 Questions Presented (p. 83)
 Statement of Parties in Interest (p. 89)
 Table of Contents; Table of Authorities (p. 89)
 Constitutional and Statutory Authorities (p. 90)
 Statement of Jurisdiction (p. 91)
 Introduction or Preliminary Statement (p. 91)
 Proceedings Below (p. 92)
 Statement of Facts (p. 93)
 Summary of Argument (p. 97)
 Argument (p. 98)
 Conclusion (p. 100)
 Appendix (p. 101)
37. Advise the court by letter of significant authority arising after you've filed your brief (p. 101)
38. Learn how to use, and how to respond to, amicus briefs (p. 102)

Writing Style

39. Value clarity above all other elements of style (p. 107)
40. Use captioned section headings (p. 108)
41. Use paragraphs intelligently; signpost your arguments (p. 109)
42. To clarify abstract concepts, give examples (p. 111)
43. Make it interesting (p. 112)
44. Banish jargon, hackneyed expressions, and needless Latin (p. 113)
45. Consider using contractions occasionally-or not (p. 114)
46. Avoid acronyms. Use the parties' names (p. 120)
47. Don't overuse italics; don't use bold type except in headings; don't use underlining at all (p. 122)
48. Describe and cite authorities with scrupulous accuracy (p. 123)
49. Cite authorities sparingly (p. 125)
50. Quote authorities more sparingly still (p. 127)
51. Swear off substantive footnotes-or not (p. 129)
52. Consider putting citations in footnotes-or not (p. 132)
53. Make the relevant text readily available to the court (p. 135)
54. Don't spoil your product with poor typography (p. 136)