User Name: Venetia Velazquez
Date and Time: Wednesday, December 14, 2022 1:01:00PM AST
Job Number: 186066756

Document (1)

1. *2018 Model Rules of Professional Conduct 3.1*
   Client/Matter: general

2018 Model Rules of Professional Conduct 3.1

February 8, 2018

Reporter
2018 Model Rules of Professional Conduct 3.1

ABA Model Rules of Professional Conduct and Code of Judicial Conduct > MODEL RULES OF PROFESSIONAL CONDUCT > 2018 EDITION > ADVOCATE

MODEL RULES OF PROFESSIONAL CONDUCT , 2018 EDITION , ADVOCATE

Core Terms

frivolous, good faith, legal procedure, existing law, modify

Paragraph: RULE 3.1 - Meritorious Claims And Contentions

Text

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

End of Document

User Name: Venetia Velazquez
Date and Time: Wednesday, December 14, 2022 1:00:00PM AST
Job Number: 186066590

Document (1)

1. *2018 Model Rules of Professional Conduct 3.3*
   Client/Matter: general

2018 Model Rules of Professional Conduct 3.3

February 8, 2018

Reporter
2018 Model Rules of Professional Conduct 3.3

ABA Model Rules of Professional Conduct and Code of Judicial Conduct > MODEL RULES OF PROFESSIONAL CONDUCT > 2018 EDITION > ADVOCATE

MODEL RULES OF PROFESSIONAL CONDUCT , 2018 EDITION , ADVOCATE

Core Terms

tribunal, disclosure, false evidence, offer evidence, withdraw, remedial measure, adjudicative process

Paragraph: RULE 3.3 - Candor Toward The Tribunal

Text

(a) A lawyer shall not knowingly:

> **(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;**
>
> **(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or**
>
> **(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false**.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a) (3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information

relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Definitional Cross-References

"Fraudulent" *See* Rule 1.0(d)

"Knowingly" and "Known" and "Knows" *See* Rule 1.0(f)

"Reasonable" *See* Rule 1.0(h)

"Reasonably believes" *See* Rule 1.0(i)

"Tribunal" *See* Rule 1.0(m)

End of Document

WRITING TO JUDGES... PERSUASIVELY

HON. LIDIA STIGLICH AND ZELALEM BOGALE, ESQ.

Painters paint. Musicians play. Actors act. As far as conventional wisdom goes, lawyers talk. In truth, lawyers write, and good lawyers write well. Words are the building blocks of the law and language is the central tool of the legal trade. Think of it this way: Like a tepid performance on the silver screen, an impertinent fact, an improper citation or a misstatement of the law in a legal brief can distract your audience and detract from your purpose as a zealous advocate for your client.

This is particularly true in persuasive brief writing. To be sure, your audience with a persuasive brief is a judge or a panel of judges, not your client, not opposing counsel. And, just as painters paint and lawyers write, judges read. As seasoned readers, all judges (and their law clerks) appreciate good writing. That's why when Chief Justice John G. Roberts was asked, during an interview with Black's Law Dictionary's Editor-in-Chief Bryan A. Garner, if he enjoyed reading briefs, he responded, "If they're good." And judges know good writing when they see it.

So, if all goes well, we will provide some useful suggestions to make your next persuasive brief, at the trial or appellate level, more effective.

Tell the Truth

Nearly 20 years ago (in this same publication, no less), District Judge Brent T. Adams also led with this advice in an article on legal writing. Judge Adams confessed, "After twenty years in this profession, I have come to believe that [a reputation for truthfulness] may be the only important thing."

As officers of the court, lawyers are bound by the rules of professional responsibility to be candid with the tribunal, but telling the truth is less about the absence of candor than it is about ensuring your written and oral communications with the court are accurate and reliable.

Of course, deliberately misinforming the court as to the facts of your case or the law is a violation of your duty of candor. Beyond that, though, an honest misunderstanding or inaccurate representation of the facts or the law – no matter the reason – will prompt the judge to scrutinize

the rest of your brief closely. Rather than being swept along by the substance of your arguments, the judge will become a detached observer, looking for your next mistake.

So take the time to know your case and deliver your information accurately. In a close case, the court is more likely to adopt your reasoning if you have proven to be a reliably honest advocate for your position.

Plan (then Plan Again) Before You Write

It is more difficult to write poorly if you have planned. Plotting your course before you embark is essential for many reasons: it promotes brevity and clarity, and it saves time.

Brevity

For centuries – even millennia – writers have agreed that shorter, if possible, is better. And readers agree. "I have yet to put down a brief," says Chief Justice Roberts, "and say, 'I wish that had been longer.'"

However, we all know cases can be complex. A three-page motion for summary judgment in a water rights case spanning several counties and involving multiple parties might be insufficient for persuasive purposes. Brevity for its own sake isn't necessarily favored as much as unnecessary length is disfavored. So, tighten up your statement of facts. Declutter your string citations if one case will do the trick. Pare down your rule statements. Judges know the legal standards for a motion for summary judgment – you don't need three pages to explain them. Strive for economy in your language and you will produce a hard-hitting brief.

Further, with approximately 2,200 pending cases at any given time, the Nevada Supreme Court is one of the busiest appellate courts in the country. Each district judge in the Eighth Judicial District Court is assigned an average of 1,400 cases, while each district judge in the Second Judicial District Court is assigned an average of 1,200 cases. With these caseloads, getting to the point quickly cannot be overvalued.

Clarity

Upon the co-author's appointment to the bench, Justice Ruth Bader Ginsburg provided her with this sage advice: "In speaking and writing, aim for clarity so that others may grasp your meaning at once." In brief writing, as in judicial opinion writing, clarity is nearly synonymous with readability, and readability is a function of good organization and planning. There is no right way to organize a persuasive brief; every case is different, but there must be some organization.

Going from big to small is an effective way to organize your brief. Begin with the big picture and, before you write, try to articulate the distilled version orally in language that a non-lawyer could understand. Then, break up the brief by stating the issues and carry it out in stages, issue by issue. (If this reminds you of outlining in law school, it's not a coincidence.) Within each issue, decide which facts are relevant and use them to propel your analysis. If certain facts are relevant to more than one issue, be sure to recast them (accurately) using greater or lesser detail to fit each issue.

As to your statement of facts, you can't plan enough. Because the legal principles are usually well settled, the facts and how you apply them will drive the legal analysis. An introduction with a theme of the case is a good tool for setting the stage before you begin disclosing the facts. The refined version of the big picture you articulated at the outset is good here. When you begin to lay out the facts, be sure to "tell" not "state" them. A well-paced narrative containing some degree of drama is much more readable (and more clear) than a series of sterile, numbered sentences. Indeed, a good brief writer is a good storyteller. Again, Chief Justice Roberts:

> [E]very lawsuit is a story. I don't care if it's about a dry contract interpretation; you've got two people who want to accomplish something and they're coming together; that's a story. And you've got to tell a good story.... [N]o matter how dry it is, something's going on that got you to this point and you want it to be a little bit of a page-turner, to have some sense of drama, some building up to, you know, the legal arguments.

continued on page 18

WRITING TO JUDGES... PERSUASIVELY

continued from page 17

Clarity speaks for itself. It requires no introduction **or** assurances. In his first play, "Oedipus," Voltaire writes, "Virtue debases in justifying itself." Don't detract from your narrative or analysis by stating that something is "clear." Simply stating that something is "clear" does not make it so. State it declaratively and provide authority for the proposition, then move on.

More often than not, the act of writing a brief will actually change how you think about your case.

Saving Time

From Cicero to Pascal, from Jefferson to Orwell, it is well settled that shorter works take longer to produce. Why? Saying the same thing in one page instead of two requires planning, and planning takes time.

But as a lawyer, you can't spend your time more wisely. Though it eats up time on the front end, it will save you hours (even days) of reorganizing later on when your time would be more effectively used preparing for oral argument or for trial.

Great Writing Doesn't Exist

Though planning is of utmost importance, it is no substitute for revisiting your work after a period of reflection.

"There is no great writing, only great rewriting." This quote, often attributed to Justice Louis Brandeis, captures the essence of a good persuasive brief. When asked how many edits an opinion typically goes through in his chambers, Justice Antonin Scalia had another way of putting it, "Oh my," he responded. "It depends on how much time I have."

More often than not, the act of writing a brief will actually change how you think about your case. Seeing your arguments on paper tends to give them more definition. Once written, you may think it better to lead your analysis of a complex issue with a conclusion rather than an issue statement and the legal principles. Or, you may discover the facts of your case need to be rearranged or told with more detail to harness their persuasive force. Revisiting your brief once it is written will ensure you are saying exactly what you mean to say. ■

HON. LIDIA S. STIGLICH is a district judge in the Second Judicial District Court, Department Eight, in Reno, Nevada. Before her appointment to the bench by Governor Brian Sandoval in November of 2012, she was the managing partner at Stiglich & Hinckley, LLP in Reno, and a trial attorney at the San Francisco Public Defender's Office.

ZELALEM BOGALE has been a law clerk since 2011, and currently serves as law clerk to Judge Stiglich. He has previously clerked in the Second Judicial District Court and the U.S. District Court for the District of Nevada, and has served as a judicial extern in the U.S. District Court for the Southern District of California. He will join the Washoe County District Attorney's Office as a Deputy District Attorney in the fall.

PERSUASIVE WRITING[1]

One of your primary duties as a lawyer, no matter your area of practice, is to advocate for your client. Today, most of this advocacy is accomplished through writing.[2] Therefore, persuasive writing is, as one professor puts it, "essential to the practice of law."[3] Persuasive writing enables you to make strategic decisions about how to present and package your arguments to ensure your document is as convincing as possible. This handout provides a brief overview of the differences between objective and persuasive writing, and it then offers specific tips and tools for maximizing your persuasive potential.[4]

I. Transitioning from Objective to Persuasive Writing[5]

In **objective writing**, you present information in a neutral way with the goal of informing and predicting. You discuss both the strengths and weaknesses of an argument and make a prediction, based on that analysis, as to the expected outcome. For example, you may prepare an internal memorandum to inform a supervising attorney about a specific area of the law, or you may write a letter to a client to provide an unbiased assessment of a case.

In **persuasive writing**, you present information with the goal of informing and persuading. You aim to convince a specific audience that your side is best and, therefore, you present information in the light most favorable to your client. Although you may still acknowledge both sides of the argument, you work to distinguish or minimize the significance of counterarguments. For example, you may write a motion to persuade a trial court to rule in your client's favor, or you may write an appellate brief to sway the tribunal to remand your client's case.

---

[1] Revised by Catherine Carulas in 2019. Unless otherwise cited, the concepts in this handout were adapted from DIANA R. DONAHOE, TEACHINGLAW.COM (2016). The original handout was written in 2003 based on adaptations from MARY B. RAY & JILL RAMSFIELD, LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN (3d ed. 2000).

[2] *See* MICHAEL SMITH, ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING 3 (3d ed. 2013).

[3] *Id.*

[4] This handout focuses on persuasive writing generally. Additional Writing Center handouts discuss persuasive writing in specific legal documents. All handouts are available at https://www.law.georgetown.edu/academics/academic-resources/the-writing-center/guides-and-handouts/

[5] For specific guidance on how to transition from a memo to an appellate brief, see the Writing Center handout, *From Memo to Appellate Brief*, available at https://www.law.georgetown.edu/wp-content/uploads/2018/07/From-Memo-to-Appellate-Brief.pdf

II. Persuasive Writing Techniques

This section offers various techniques to help make your writing more persuasive. As you read through this section, you may find that some of the tips and tools seem to contradict each other, or you may think that this guidance should be violated in your specific situation. No matter how you decide to present your client's case, make sure you are making *deliberate choices*. As you write and rewrite, you should think carefully and critically about how certain words or structures you employ are likely to be received by the decisionmaker.

Develop a Theory of the Case:[6] Persuasive documents should be grounded in a subtle theory. Your theory of the case presents a short, simple, and compelling answer to the question: "why should your client win?"; and it finishes the sentence: "you should find for my client because…" Example theories include: "the defendant was greedy," or "the defendant corporation thinks it is above the law," or "the officer was just doing her job." By injecting your theory throughout your document, your goal is to make the reader *want to find for your side*. The following are some tips to keep in mind when forming your theory.

- Consider your audience: Put yourself in the decisionmaker's shoes and ask yourself the same question she will ask: "why should I care?"[7] An answer to this question may change depending on the specific decisionmaker. If you are writing a brief or motion for a judge, think about common judicial anxieties, including: getting the law wrong; constructing novel "duties, rules, or defenses"; or reaching an unjust outcome.[8]

  Example: If you represent the plaintiff in a negligence case, you could frame your theory as "Mr. Jones was vulnerable," *or* "the Defendant was distracted." Consider whether your decisionmaker is more likely to be swayed by a theory that focuses on the plaintiff's sympathetic qualities or one that emphasizes the defendant's flaws.

- Think about your opponent's theory: Take time to think through what theory your opponent might advance. If you are responding to an opponent's document, you may already know the other side's theory. How can your theory best counter your opponent's likely theory?

- Keep your theory subtle: The most effective theories are typically those that are never affirmatively stated. Rather, your goal is to set out the facts, organize your arguments, structure your paragraphs, and choose words according to your theory so that after she reads your document, the decisionmaker cannot help but understand why your client should win.

[6] The "theory of the case" is sometimes referred to as a theme or thesis. For additional tips on developing the theory of the case, see the Writing Center handout, *From Memo to Appellate Brief*, *supra* note 5.
[7] ROSS GUBERMAN, POINT MADE: HOW TO WRITE LIKE THE NATION'S TOP ADVOCATES 27 (2d ed. 2014).
[8] *Id.*

Tell a Compelling Story with the Facts:[9] The facts section is typically your first opportunity to present your client's perspective to the decisionmaker. The following are some tips to keep in mind when writing the facts section.

- Start by engaging the reader: You should use the first sentences of your facts section as an opportunity to draw your reader in and introduce your theory of the case. You can start the facts in a number of ways; for example:

    - Consider starting with an action point in your story.

        Example: Around 9:00 pm on March 22, 2019, Mr. Jones was relaxing on his couch after a long day of work when he heard a loud banging on his front door. Mr. Jones opened the door to find four armed, uniformed officers standing on his stoop.

    - Consider starting with a "panoramic shot"[10] to give your reader a bird's-eye view of the context in which your controversy arises.

        Example: "The plotline of this controversy is all too familiar: Wunderkind entrepreneur conceives of a transformative business and propels it to a meteoric success, but failed rivals insist they thought up the idea first and demand all the profits."[11]

- Include and emphasize useful facts: Your facts section must include all legally significant facts—that is, any facts you will use in your argument—and you should make an effort to highlight your best facts.

    Example: If you want your reader to remember that the defendant paid $5 million to a government official, repeat the $5 million figure in various ways throughout your facts section.[12]

- Include and downplay unfavorable facts: Even though you should present the facts in the light most favorable to your client, do not omit damaging facts. You establish credibility by mentioning any potentially harmful facts and integrating them into your story.

---

[9] For more thorough guidance on drafting a facts section in an appellate brief, see the Writing Center handout, *Writing a Statement of Facts in an Appellate Brief*, available at https://www.law.georgetown.edu/wp-content/uploads/2018/07/StatementofFactsinaBriefFinal.pdf

[10] GUBERMAN, *supra* note 7, at 56.

[11] This example was the opening line of Joshua Rosenkranz's facts section in his brief in *Facebook, Inc. v. ConnectU, Inc.* The sentence was reproduced and analyzed by Ross Guberman in *Point Made: How to Write Like the Nation's Top Advocates*. *See* GUBERMAN, *supra* note 7, at 56.

[12] *See* NOAH A. MESSING, THE ART OF ADVOCACY 8–9 (2013).

Prioritize Your Strongest Points in the Argument Section:[13] In terms of the large-scale organization of your argument, choose the structure that is most logical and convincing to your audience. Keep the following in mind when determining how to organize your arguments.

- Begin with a threshold issue: You should start with a threshold issue, if there is one, because you do not want to violate the reader's sense of logical progression.

- Organize to emphasize your strongest arguments: If your legal issues are more independent, you should order them to highlight your strongest arguments.

    - Consider the following when organizing your arguments: "the strength of the law, equity or judicial priority."[14]

    - Although you must address weak points in your client's case, carefully consider where to put your weaker arguments and counterarguments. Use the structure that best suits your position and avoid letting your opponent's structure dictate how you present your arguments.

- Be conscious of "air time": Keep in mind that your document should highlight your client's strongest arguments. Although you should effectively respond to the other side's main points, you may come off as defensive if you dedicate more space than is necessary to rebutting their arguments.

- Use headings:[15] Look to headings—both point headings and subheadings—to guide your reader through your argument. The decisionmaker should be able to quickly skim your headings and understand why your client should win.[16]

Begin Paragraphs with an Affirmative Statement: Within paragraphs in your argument section, your topic sentences should work to both inform the reader of the rule, factor, or element the paragraph will discuss, as well as to persuade. Aim to start paragraphs with an affirmative statement of your argument. If you start with a response to an opponent's argument, you may come off as defensive, which could impair your credibility.

> *Less persuasive topic sentence*: The defense argues that the plaintiff gave no warning. This is not the case, however, because the plaintiff left messages on the defendant's answering machine on two occasions.
>
> *More persuasive topic sentence*: The plaintiff gave adequate warning; she called the defendant repeatedly and left messages on his answering machine on two occasions.

---

[13] For additional guidance, see the Writing Center handout, *Tips for Effective Organization*, available at https://www.law.georgetown.edu/academics/academic-resources/the-writing-center/guides-and-handouts/tips-for-effective-organization/

[14] Mary-Beth Moylan & Adrienne Brungess, *Persuasive Legal Writing*, *in* MARY-BETH MOYLAN & STEPHANIE J. THOMPSON, GLOBAL LAWYERING SKILLS 129, 138 (2013).

[15] For additional guidance, see the Writing Center handout, *Writing Effective Point Headings*, available at https://www.law.georgetown.edu/wp-content/uploads/2018/11/Updated-Handout.Pointheadings.pdf

[16] GUBERMAN, *supra* note 7, at 93.

Make Legal Rules Work for Your Client:[17] Although legal rules must be accurate, they are often not completely rigid. You should read and reread prior caselaw to see if there are ways to state legal rules so they are more favorable to your client. Consider the following tips.

- Start with your client's desired outcome: Framing a legal rule to emphasize your desired outcome helps to solidify the result in the decisionmaker's mind.

- Highlight your opponent's burden of proof: Whenever possible, hammer home the point that your opponent cannot win on an issue *unless she meets her burden*.

- Think about how widely you want the rule to apply: When you state a rule narrowly, you restrict its potential application. On the other hand, when you present a rule broadly, you expand its perceived application.

Sample persuasive rule for defendant: An officer violates the Fourth Amendment when she conducts a search without a warrant. U.S. Const. amend. IV. A narrow exception to the warrant requirement may exist if the government can prove that the officer obtained voluntary consent. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

Sample persuasive rule for government: A warrantless search does not violate the Fourth Amendment when it is conducted pursuant to an individual's voluntary consent. *See* U.S. Const. amend. IV; *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

Use Parentheticals to Support Rules: Consider accompanying case citations after rules with parentheticals. One way to write a parenthetical is to begin with a gerund (an *-ing* word) followed by "a reason the court did what it did."[18]

Example: A consenting party has apparent authority to consent to a search if she stayed overnight or spent substantial time at the defendant's residence. *See Kinney*, 953 F.2d at 867 (finding defendant's girlfriend had apparent authority because she was "obviously an inhabitant of the apartment" where she stayed there most nights and stored her belongings).

Distinguish Unfavorable Precedent: Although you must address unfavorable precedent, you can distinguish unhelpful authority to make your argument more persuasive.[19] For example:

- Appeal to stronger legal authority: Perhaps a state intermediate appellate court applied a legal rule in a way that disfavors your client, but the state supreme court applied the rule in a way that you can interpret more favorably.

- Distinguish based on facts or policy: Perhaps the facts of a former case are so different from those in your case that you can argue the legal rule should be

[17] *See generally* Moylan & Brungess, *supra* note 14, at 132.
[18] GUBERMAN, *supra* note 7, at 167.
[19] LINDA H. EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION 229–32 (7th ed. 2018).

applied differently. Or maybe applying a legal rule as applied by a former court would reach a result that would make no sense or would be unjust.

Play Around with Sentences: You can also maximize your persuasive impact within sentences themselves. Consider the following techniques.

- Focus on the subject: You highlight a main point by putting it in the main subject and verb of your sentence. On the other hand, you can deemphasize a point by putting it in the dependent clause.
    - One way to minimize the significance of a bad fact is to start a sentence with "although" to "subordinate the bad fact to its more favorable context."[20]

        Example: Although Mrs. Smith is not fluent in English, when Officer Jones asked her about her son's whereabouts, she calmly picked up a notepad, flipped through the pages, and pointed to a page on which her son's work address was written.

        Example: Although the defendant had not come to a full stop at the official stop sign, he had slowed to less than five miles per hour and was not accelerating at the time of the accident.

- Vary sentence structure and length: Consider altering sentence structure and length to keep your reader's attention.
    - At certain points, however, consider repeating sentence or phrase structures to create a sense of rhythm and anticipation, or to emphasize certain points.

        Example: At best, the City confused its argument by trying to do too much without a full explanation. At worst, the City contradicted itself by misapplying the law.

    - Consider using a series of short sentences when you want to convey that something happened quickly or longer sentences when you want to convey that the actor or action was deliberate and thoughtful.

        Example: The car sped by. Shots were fired. The witness glanced at the passing car. She saw someone.

        The witness was walking on the street, paying close attention to her surroundings given that it was evening. She noticed a car speeding by her, and she then heard the bang of several gunshots.

[20] GUBERMAN, *supra* note 7, at 82.

Drawn by the noise of the gunshots, she turned her attention to the car and stared at the shooter.

- Consider using short, pointed sentences when you want to build up to an action or emphasize a key point.

  Example: "Substituting one decisionmaker for another may yield a different result, but not in any sense a more 'correct' one. *So too here*."[21]

Think About Language: When it comes down to individual words, you should think carefully about the terms and phrases you choose and how they will affect the legal reader. Consider the nuanced meaning of words and the images conveyed by such words.

- Consider using active *or* passive voice: Use active voice to emphasize actors and actions. Active sentences are often easier to read, less wordy, and more convincing than those written in passive voice. Therefore, when in doubt, it is always useful to try to write actively. Nevertheless, you should consider turning to passive voice when you want to downplay an actor or action.

  Example: If you are representing Mr. Smith, who is accused of assault, it is probably more effective to say "the plaintiff was struck by Mr. Smith" than "Mr. Smith struck the plaintiff."

- Consider transforming common phrases into vivid verbs[22] to emphasize an action:

  Example: Instead of "take out of context," consider "pluck"; instead of "take into consideration," consider "heed."[23]

- Use concrete facts: As compared with abstract words, descriptive language creates clear and memorable images in the reader's mind.

  Less Persuasive: Vehicle
  More Persuasive: 1965 black Stingray

- Use colorful, descriptive words to add emphasis:

  Example: If you are representing the defendant in a criminal case you may say that the police "banged" or "slammed" on the door, while the government may say the police "knocked."

---

[21] This example comes from John Roberts's brief in *Alaska v. EPA*. The sentence was reproduced and analyzed by Ross Guberman in *Point Made: How to Write Like the Nation's Top Advocates*. *See* GUBERMAN, *supra* note 7, at 227 (emphasis added).
[22] *See id.* at 198 (producing a list of 50 "zinger verbs").
[23] These examples were drawn from *id.* at 191.

- Avoid overly theatrical language: Although colorful language helps paint a picture in your reader's mind, overly dramatic language can damage your credibility. Remember that the goal of persuasive writing is to guide your decisionmaker to a specific conclusion. A reader is far more likely to be persuaded if she comes to that conclusion herself.

  Example: Pretend you represent the plaintiff and want to convey that the defendant was motivated by greed. Instead of telling the reader that the defendant was greedy, use the facts of the case so that when she sets down your document she automatically thinks: "the defendant was greedy."

- Avoid overly definitive words: Aim for an authoritative tone but be wary of words such as "clearly," "definitely," or "unquestionably."[24] These conclusory words may undermine your credibility. Also, if you are writing to persuade a decisionmaker that your side is best, your opponent likely thinks she has a fairly strong argument on the other side. Therefore, the resolution is probably not "clear."

- Avoid hedging: Although you should avoid words such as "clearly" and "definitely," you should also consider how hedging may undermine your case.

  Example: If you are representing the government in a criminal case, it would be less persuasive to say "it seems like the defendant murdered Mrs. Jones" versus "the defendant murdered Mrs. Jones."

- Determine how to refer to key actors: Early in the writing process, decide how you will refer to your client and the other parties. You should keep these terms consistent throughout the document.

  Example: If you represent a defendant in a criminal case, you probably want to make her seem more sympathetic. Therefore, it would be more persuasive to refer to her as "Mrs. Jones" rather than "Defendant." In contrast, the government in the same case will probably refer to your client as "Defendant."

  - Again, keep in mind, however, that you should avoid seeming overly dramatic. For example, if you represent a plaintiff suing a corporation, referring to the defendant as "the corporate defendant" throughout the entire document may come off as a little transparent, which could impair your credibility. Therefore, in some situations, it may be most effective to simply refer to both parties by name.

[24] *See* Paul T. Wangerin, *A Multidisciplinary Analysis of the Structure of Persuasive Arguments*, 16 HARV. J. L. & PUB. POL'Y 202, 206–08 (1993).

- Use plain language and be concise: [25] When in doubt, write in plain English. Complex language is not only distracting, it may also undermine your credibility. The reader may think you have something to hide or are simply trying to impress her by using overly formal, wordy, and obscure language. Do not make the decisionmaker's job more difficult by forcing her to grab a dictionary to understand what you are trying to say.

Consider the Tone of the Document: As you read and reread your draft, consider the tone you are trying to convey. When in doubt, a formal, confident tone is likely more persuasive than one that is whiny, negative, or hesitant. In addition, you should always aim to take the high road; you will come off as more credible if you rely on the strength of your arguments rather than personal attacks on your opponent.

Maximize Presentation: Although you are unlikely to win on presentation alone, ensuring your formatting, sentences, and words look good to the reader will help her better understand and grasp your arguments.

- Emphasize sparingly: Although boldface, italics, and underlining have their place in legal briefs, you should always think before adding emphasis because, as one decisionmaker notes, "[e]ffectiveness [can be] lost by *excessive* capitalization, underlining, boldface type, or italics."[26]

- Provide visual aids: When possible, consider using pictures, maps, diagrams, and other visual aids in your documents because "[*s*]*eeing* a case makes it come alive to judges."[27] Nevertheless, while these tools may help persuade the reader, make sure you use them effectively; you should avoid confusing or distracting the decisionmaker.

- Proofread: A sloppy document that is riddled with spelling, citation, or grammatical errors is less persuasive than a perfectly polished product. Thus, ensuring that your document is polished will enhance your credibility in the eyes of the decisionmaker. Again, although proofreading is unlikely to make up for ineffective legal analysis, if all else is even, the fact that you took the time to proofread and polish may tip the scales in your favor.

---

[25] You will find tools for conciseness in the Writing Center handout, *Concise is Nice*, available at https://www.law.georgetown.edu/academics/academic-resources/the-writing-center/guides-and-handouts/concise-is-nice/

[26] GUBERMAN, *supra* note 7, at 288 (quoting Daniel M. Friedman, *Winning on Appeal*, 9 LITIG. 15, 17 (1983)) (emphasis added).

[27] Richard A. Posner, *Effective Appellate Brief Writing*, AM. BAR ASS'N (June 19, 2018), https://www.law.georgetown.edu/academics/academic-resources/the-writing-center/guides-and-handouts/concise-is-nice/
.

User Name: Venetia Velazquez
Date and Time: Wednesday, December 14, 2022 12:54:00PM AST
Job Number: 186065979

Document (1)

1. *V.I.S. Ct. R. Rule 211.1.1*
   Client/Matter: general
   Search Terms: civility
   Search Type: Natural Language
   Narrowed by:

Content Type	Narrowed by
Statutes and Legislation	Jurisdiction: Virgin Islands

V.I.S. Ct. R. Rule 211.1.1

Court rules current with all changes ordered as of October 27, 2022

VI - Virgin Islands State & Federal Court Rules > Virgin Islands Supreme Court Rules > Rule 211. Virgin Islands Rules of Professional Conduct.

Rule 211.1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

History

--Adopted Dec. 23, 2013, eff. Feb. 1, 2014.

Annotations

Case Notes

Suspension

When respondent violated V.I. Sup. Ct. R. 211.1.1, 211.1.3, 211.1.4, 211.1.15, and 211.8.1 by, among other things, permitting the probate of an estate to languish for over a decade, failing to communicate with a beneficiary, and by failing to keep safe certain property of that estate, and by failing to respond to disciplinary counsel in a timely manner, and where the numerous aggravating factors significantly outweighed the mitigating influence of respondent's good character and reputation in the community and the absence of a dishonest or selfish motive, respondent was required to pay restitution to the beneficiaries in the amount of $29,269.85, and was suspended from the practice of law for 18 months. *In re Maynard, 68 V.I. 632, 2018 V.I. Supreme LEXIS 9 (June 8, 2018)*.

End of Document

User Name: Venetia Velazquez
Date and Time: Wednesday, December 14, 2022 12:39:00PM AST
Job Number: 186064147

Document (1)

1. *V.I.S. Ct. R. Rule 211.3.3*
   Client/Matter: general
   Search Terms: candor
   Search Type: Natural Language
   Narrowed by:

Content Type	Narrowed by
Statutes and Legislation	Jurisdiction: Virgin Islands

V.I.S. Ct. R. Rule 211.3.3

Court rules current with all changes ordered as of October 27, 2022

VI - Virgin Islands State & Federal Court Rules > Virgin Islands Supreme Court Rules > Rule 211. Virgin Islands Rules of Professional Conduct.

Rule 211.3.3. *Candor* Toward the Tribunal.

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 211.1.6.

(d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

History

--Adopted Dec. 23, 2013, eff. Feb. 1, 2014.

End of Document

User Name: Venetia Velazquez
Date and Time: Wednesday, December 14, 2022 12:42:00PM AST
Job Number: 186064548

Document (1)

1. *V.I.S. Ct. R. Rule 211.4.1*
   Client/Matter: general
   Search Terms: candor
   Search Type: Natural Language
   Narrowed by:

Content Type	Narrowed by
Statutes and Legislation	Jurisdiction: Virgin Islands

V.I.S. Ct. R. Rule 211.4.1

Court rules current with all changes ordered as of October 27, 2022

VI - Virgin Islands State & Federal Court Rules > Virgin Islands Supreme Court Rules > Rule 211. Virgin Islands Rules of Professional Conduct.

Rule 211.4.1. Truthfulness in Statements to Others.

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 211.1.6.

History

--Adopted Dec. 23, 2013, eff. Feb. 1, 2014.

End of Document