

Using Westlaw to Write a Brief

A brief is a written statement containing the facts of a case and the legal arguments supporting a party's legal contentions. This quick reference guide shows how you can use Westlaw to find expert advice on writing an effective appellate brief, how to search for the legal authority you need to support your argument, how to expand and update your research, and how to study and learn from the online library of briefs written by other attorneys.

Purpose of an Appellate Brief

The purpose of an appellate brief is persuasion. As the authoring attorney, it is your job to persuade the court that your arguments should prevail and that the relief sought should be granted. Westlaw includes many articles that provide guidance on how to write a persuasive brief, just a few of which are listed below. As you consider the advice given in these articles, remember to follow the guidelines provided by your instructor.

- Robert R. Baldock, Carlos F. Lucero & Vicki Mandell-King, *What Appellate Advocates Seek from Appellate Judges and What Appellate Judges Seek from Appellate Advocates*, Panel at 10th Circuit Judicial Conference (June 29–July 1, 2000) in 31 N.M. L. Rev. 265 (2001).
- Stephen J. Dwyer, Leonard J. Feldman & Ryan P. McBride, *How to Write, Edit, and Review Persuasive Briefs: Seven Guidelines from One Judge and Two Lawyers*, 31 Seattle U. L. Rev. 417 (2008).
- William Eich, *Writing the Persuasive Brief*, 76 Wis. Law. 20 (Feb. 2003).
- Steven R. Merican, *Thoughts from an Unconstrained Practitioner: Writing an Appellate Brief, or, How to Make Tax Law an Interesting Read*, 19 DCBA Brief 10 (Mar. 2007).
- Brian L. Porto, *The Art of Appellate Brief Writing*, 29 Vt. B.J. 30 (Summer 2003).
- Harry Pregerson, *The Seven Sins of Appellate Brief Writing and Other Transgressions*, 34 UCLA L. Rev. 431 (1986).
- Sarah E. Ricks & Jane L. Istvan, *Effective Brief Writing Despite High Volume Practice: Ten Misconceptions That Result in Bad Briefs*, 38 U. Tol. L. Rev. 1113 (2007).
- Jennifer Sheppard, *Once Upon a Time, Happily Ever After, and in a Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda*, 46 Willamette L. Rev. 255 (2009).

WestlawNext is available on the Web at lawschool.westlaw.com.

Category:
Sharpening Your Skills

For research assistance 24 hours a day, seven days a week, call the West Reference Attorneys at 1-800-850-WEST (1-800-850-9378).

To retrieve an article on Westlaw using its citation, type the citation in the search box at the top of the page. For example, to retrieve *The Seven Sins of Appellate Brief Writing and Other Transgressions*, 34 UCLA L. Rev. 431, type **34 ucla l rev 431** in the search box and click **Search**.

To retrieve additional articles discussing effective brief writing, use Advanced Search. Click **Secondary Sources** on the All Content tab at the home page, then click **Law Reviews and Journals** to display the Law Reviews and Journals page. Click **advanced** next to the search box at the top of the page to display the Advanced Search page. In the Title box, type a boolean search such as **writing /5 effective /5 brief** and click **Advanced Search**.

Quick Advice from the Judiciary

In the panel discussion *What Appellate Advocates Seek from Appellate Judges and What Appellate Judges Seek from Appellate Advocates*, U.S. Court of Appeals Judge Robert Baldock described the qualities he likes to see in a brief:

[A] terrific brief that I enjoy is one that is very precise and gets to the point of the issues that have been raised, so that I know exactly what it is that you claim as an appellant. The brief needs to identify what the alleged reversible error is, taking into consideration the standards of review that we have to apply, because that standard in many instances determines the outcome.

And in *The Seven Sins of Appellate Brief Writing and Other Transgressions*, U.S. Court of Appeals Judge Harry Pregerson lists his seven sins of brief writing: long, boring briefs; incoherent, unfocused, and disorganized briefs; string citations and other poor use of authority; briefs with abusive language; briefs that ignore the standard of review or attempt to relitigate the facts; briefs that ignore jurisdiction; and the last-minute emergency motion—usually filed at 4 p.m. on a Friday, before a holiday.

Use Westlaw to Find the Law

When you run a search on Westlaw, you search all of the core legal content by default. Core content comprises cases; statutes and court rules; regulations; administrative decisions and guidance; trial court orders; secondary sources; forms; briefs; trial court documents; expert materials; jury verdicts and settlements; proposed and enacted legislation; and proposed and adopted regulations.

Complete these steps to search for documents:

1. Type terms describing your issue in the search box.
2. Leave the default jurisdiction or click the arrow to display the Jurisdiction selector. Select up to three jurisdictions and click **Save**.
3. Click **Search**.

Browsing content

In addition to running a search, you can use the Browse feature to retrieve documents and to access the table of contents for statutes, regulations, and treatises. Click a category link on one of the tabs in the Browse section of the home page. For example, click **Briefs** on the All Content tab to display the Briefs content category page, then browse the content using the links.

Browsing cases

Starting from the Browse section of the home page, you can retrieve cases in several ways:

- Click the **All Content** tab, then click **Cases** to display the Cases page, which organizes cases under Federal Cases by Court, Federal Cases by Circuit, Cases by State, Cases–Other U.S. Jurisdictions, and Cases by Topic. Click the appropriate links to retrieve the cases you want to search.
- Click the **Federal Materials** tab, then click **Federal Cases** to retrieve cases from specific federal courts, such as the U.S. Supreme Court, or from federal courts in a specific circuit or state.
- Click the **State Materials** tab to view a list of states. Click a state name, then click a link to that state’s cases under Cases to search decisions from state or federal courts in that state.
- Click the **Topics** tab to view a list of practice areas. Click a topic name, for example, **Criminal Law**, then click the link to case law for that topic under Cases to search state and federal cases related to the area of practice.

When you click a link for a specific court, such as **U.S. Supreme Court**, a list of the 10 most recent cases from the court is displayed. A corresponding tabbed search box is displayed at the top of the page. You can search all cases from the court by typing a search in this box and clicking **Search**.

Learn from Other Briefs

Westlaw contains a collection of more than 2.4 million state and federal briefs and other court documents. Use briefs to learn how other attorneys have analyzed and argued issues similar to the ones you are arguing on appeal. Briefs can also provide insight into how opposing counsel might argue the other side of the case.

You can retrieve briefs by running a search at the home page or by linking to them while viewing a case. You can also retrieve briefs by using the Briefs page. To display the Briefs page, click **Briefs** on the All Content tab. Briefs are organized by federal court, by state, and by topic.

To search all briefs, type your terms in the tabbed Briefs search box at the top of the page. For example, type **trademark infringement on the internet**. Leave the default jurisdiction or click the arrow to display the Jurisdiction selector. Select up to three jurisdictions and click **Save**. To search briefs from a specific state or on a specific topic, click the state or topic name.

Check Your Citations and the Citations Relied Upon by Opposing Counsel

Use KeyCite® to check your citations

As you research, use KeyCite to make sure your cases and statutes are good law and to find new citing references that update your research. Use KeyCite to determine whether cases and statutes cited by opposing counsel are valid or have been criticized.

Use WestCheck.com® to automatically check your citations

WestCheck.com, an automated Web-based citation-checking tool, extracts citations from a word-processing document, checks the citations in KeyCite, and provides you with a report of the result. Access WestCheck.com at westcheck.com.


Verify Quotations

Before you submit your brief, check the accuracy of quotations by comparing the text in your brief to the text on Westlaw. For example, suppose that you want to check the following quote from *K.H. Through Murphy v. Morgan*, 914 F.2d 846, 849 (7th Cir. 1990): “Once the state assumes custody of a person, it owes him a rudimentary duty of safekeeping no matter how perilous his circumstances when he was free.”

Use a pinpoint citation

One way to access the quoted text is to use the pinpoint citation. Type **914 f2d 849** in the search box at the top of the page and click **Search**. Westlaw will retrieve the case at page 849. Browse the page for the quoted language and compare it to the text in your brief.

Search document text

Alternatively, you can search within the text of the retrieved case. Type **914 f2d 846** in the search box and click **Search**. When the case is displayed, click the magnifying glass icon () on the toolbar to display a text box. Type a boolean search using terms from the quotation such as **duty /s safekeeping** and click **Search**. Click the arrows next to the text box to view your terms, which are highlighted in a different color in the text.

Check Again with KeyCite

Before you submit your brief, use KeyCite again to verify that your cases and statutes are good law and to check the status of the authority opposing counsel has cited.

For assistance using Westlaw, call 1-800-850-WEST (1-800-850-9378). For free reference materials, visit legalsolutions.thomsonreuters.com.

