

Resources for Writing an Appellate Brief

Westlaw provides resources that can help you write an appellate brief. These resources include

- articles and texts that provide tips for writing effective briefs
- search methods and features that help you find the legal authority you need
- KeyCite®, West's citation research service
- a large collection of online briefs that you can use to study arguments made by other attorneys

The 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 to your client. Westlaw includes many articles and texts that provide guidance on how to write a persuasive brief. Just a few are listed below. As you consider the advice given in these articles, remember to follow the guidelines provided by your instructor.

- Harry Pregerson, *The Seven Sins of Appellate Brief Writing and Other Transgressions*, 34 UCLA L. Rev. 431 (1986)
- Jacques L. Wiener, Jr., *Ruminations from the Bench: Brief Writing and Oral Argument in the Fifth Circuit*, 70 Tul. L. Rev. 187 (1995)
- Christine M. Durham, *Writing a Winning Appellate Brief*, 10-OCT Utah B.J. 34 (1997)
- Jean H. Toal, Robert A. Muckenfuss, and Shahin Vafai, *Four Steps to Effective Appellate Brief Writing*, 10-JUN S.C. Law. 37 (1999)
- Karl Linde, *Appellate Brief Writing—Some (Hopefully) Helpful Hints*, 25-DEC Wyo. Law. 18 (2002)
- Carol M. Henderson, *Tips for Writing an Effective Appellate Brief*, 169-JUN N.J. Law. 22 (1995)
- Robert R. Baldock, Carlos F. Lucero, and Vicki Mandell-King, *What Appellate Advocates Seek from Appellate Judges and what Appellate Judges Seek from Appellate Advocates*, 31 N.M. L. Rev. 265 (2001). (This article is a transcript of remarks made at a judicial conference.)

To retrieve an article by citation, use the Find service. For example, to retrieve 34 UCLA L. Rev. 431, type `34 ucla l rev 431` in the *Find this document by citation* text box, which is found in the left frame of the Westlaw page and most other tabbed search pages.

To retrieve additional articles and texts that discuss effective brief writing, access the Texts and Periodicals—All Law Reviews, Texts, and Bar Journals database (TP-ALL). Restrict your search to the title field (ti), and type

`ti(effective winning writing /5 brief)`

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

For assistance, call **1-800-850-WEST** (1-800-850-9378). For technical support you can also send an e-mail message to west.support@thomson.com.

Some Quick Advice from the Judiciary

In *What Appellate Advocates Seek from Appellate Judges and what Appellate Judges Seek from Appellate Advocates*, U.S. Court of Appeals Judge Robert Baldock describes 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 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 cites 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
- The last minute emergency motion—usually filed at 4:00 p.m. on a Friday, before a holiday

Use Westlaw to Find the Law

Westlaw offers two search methods—Natural Language and Terms and Connectors.

The Natural Language Search method allows you to use plain English to retrieve relevant documents. Enter a description of your issue to retrieve the documents that best match the concepts in your description.

With the Terms and Connectors search method, you enter a query consisting of key terms from your issue and connectors specifying the relationship between those terms. For example, you can require that your key terms appear in the same sentence or paragraph. In addition, Terms and Connectors searching allows you to restrict your search to a particular part of a document, called a *field*. Field restrictions help you refine your search result.

Natural Language Search Example

To retrieve U.S. Court of Appeals cases that discuss the standard of review for exclusion of expert testimony at trial, access the U.S. Court of Appeals Cases database (CTA). If not already selected, click **Natural Language** and type

“scope of review” (“standard of review”) “excluded expert testimony”

Parentheses in a Natural Language search designate an alternative search term.

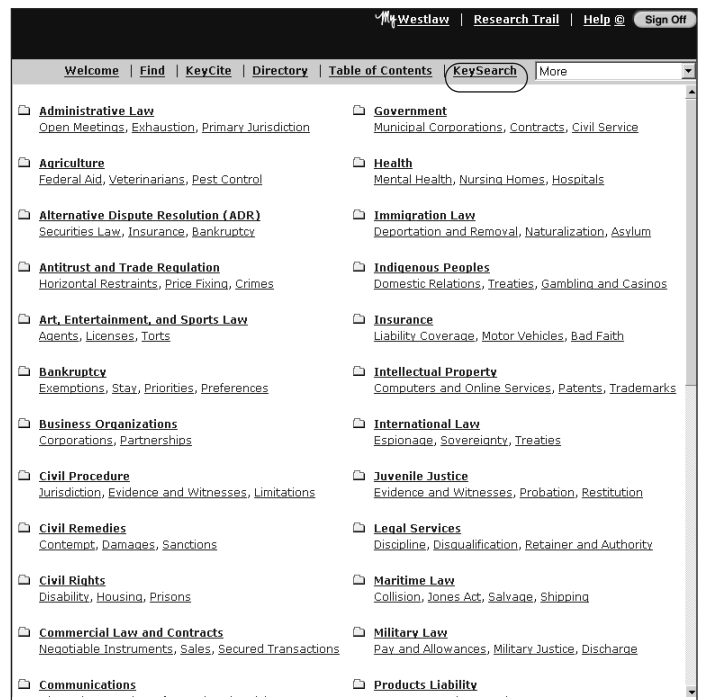
Terms and Connectors Search Example

To retrieve Illinois state cases that discuss the standard of review on appeal of a summary judgment, access the Illinois Cases database (IL-CS) and type

scope standard +2 review /s “summary judgment”

KeySearch®

KeySearch is a research tool based on the West Key Number System® that makes it easy to retrieve relevant cases and secondary sources, e.g., law review articles. KeySearch guides you through the selection of terms related to your issue. Based on your selections, KeySearch identifies the topic and key numbers most relevant to your issue and automatically provides an expert query for you. To access KeySearch, click **KeySearch** on the toolbar at any page.



The main KeySearch page

Get the Most Recent Cases with WestClip®

WestClip runs Terms and Connectors searches at a selected frequency and delivers the results to you automatically. Use WestClip to monitor Westlaw for newly decided cases and other documents that may have a bearing on your argument. To access Westclip, click **More** on the toolbar, then select **WestClip** from the drop-down list.

For more information about search methods, KeySearch, and WestClip, see *Using westlaw.com*, available at west.thomson.com/westlaw/guides.

Learn From Other Briefs

Briefs Databases

Westlaw now includes a collection of more than 900,000 briefs. Briefs are compiled in a variety of jurisdictional and topical databases to meet your research needs. Use briefs on Westlaw to learn how other attorneys have analyzed and argued issues similar to the ones you are arguing on appeal. Briefs can also provide insight on how the opposing counsel might argue the other side of the case.

To view lists of briefs databases on Westlaw, click **Directory** on the toolbar to access the Westlaw Directory. Under the *Litigation* heading, click **Briefs**. In the Briefs section, click a database name to access the database, or click a folder name to view additional listings.

You can retrieve briefs by party name with a title field (ti) search. To search for briefs by issue, use the Terms and Connectors or Natural Language search method.

Moot Court Competition Briefs

To view briefs submitted in prior competitions, access the Texts and Periodicals–All Law Reviews, Texts, and Bar Journals database (TP-ALL). Restrict your search to the prelim (pr) and title (ti) fields. Type

pr,ti(“moot court”)

Use KeyCite and Related Features to Check Your Citations and the Citations Relied Upon by the Opposing Counsel

As You Research

As you research, remember to use KeyCite, West’s citation research service, to make sure that your cases and statutes are good law and to find new citing references that update your research. Use KeyCite to check if cases and statutes cited by the opposing counsel are still valid or have been criticized.

The screenshot shows the Westlaw KeyCite interface. At the top, there are navigation links: Home, Find, KeyCite, Directory, Table of Contents, KeySearch, and More. The main content area displays the citation for **Spector v. Norwegian Cruise Line Ltd.**, 356 F.3d 641, C.A.5 (Tex.), 2004, January 12, 2004. Below the citation, there is a **History** section (Showing 3 of 32 documents) and a **Direct History** section. The Direct History section lists three items:

- 1 KeyCited Citation: **Spector v. Norwegian Cruise Line Ltd.**, 356 F.3d 641, 2004 A.M.C. 254, 15 A.D. Cases 1767, 27 NDLR P 156 (5th Cir.(Tex.) Jan 12, 2004) (NO. 02-21154, 03-20056) *Certiorari Granted by*
- 2 Spector v. Norwegian Cruise Line Ltd., 125 S.Ct. 26, 159 L.Ed.2d 856, 72 USLW 3644, 73 USLW 3059, 73 USLW 3177, 73 USLW 3204 (U.S. Sep 28, 2004) (NO. 03-1388) *AND Reversed by*
- 3 Spector v. Norwegian Cruise Line Ltd., 125 S.Ct. 2169 (U.S. Jun 06, 2005) (NO. 03-1388)

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KeyCite direct history for 356 F.3d 641

Automated Citation Checking with WestCheck.com

Use WestCheck.com, an automated Web-based citation checking tool, to save time. WestCheck.com extracts citations from a word-processing document, checks the citations with KeyCite, and provides you with a results report. Access WestCheck.com at www.westcheck.com.

The screenshot shows the WestCheck.com website. The main heading is "Extract or Enter Citation(s):". There are two options: "Extract citation(s) from a document:" and "Enter individual citation(s) or copy citations from a table of authorities or document and paste below:". The first option is selected, and a file path "C:\Documents and Settings\appellatebrief.com" is entered in the text box. Below the text box, there is a note: "Note: If you have Windows XP and have installed XP Service Pack 2, you will need to set up your pop-up blocker to display Online WestCheck.com results. For assistance call 1-800-WESTLAW. See additional information and solution options for more details." To the right of the main form, there is an "About WestCheck.com" section with a list of features: "extracts citations and applies KeyCite to citations from your documents", "retrieves KeyCite and Table of Authorities results", and "retrieves Westlaw full-text documents using Find". At the bottom of the page, there is a navigation bar with links: "About WestCheck.com", "About WestCheck.com Security", "Pricing Info", "Help | @ | Feedback", and the Thomson West logo.

The WestCheck.com page

Monitor Citations with KeyCite Alert

KeyCite Alert automatically notifies you when a new document is added to Westlaw that changes the KeyCite results for authority you’ve cited in your brief. To access KeyCite Alert, click **More** on the toolbar, then select **KeyCite Alert** from the drop-down list. At the KeyCite Alert page, click **Create Entry** or **Entry Wizard** to create a KeyCite Alert entry.

The screenshot shows a KeyCite Alert result page. At the top, there is a "Date of Printing: JUN 18, 2005" and "Last Run: JUN 17, 2005 12:11 AM CST". The main heading is "KEYCITE ALERT". Below the heading, there is a section for "Citing References" and a table of results. The table has two columns: "Additional Citations (U.S.A.)" and "History". The table contains 11 rows of results, each with a number, a citation, and a history reference. The first row is "1 Burkybide v. Bd. of Educ. of Hastings-On-Hudson Union Free School Dist., 2005 WL 1400143, *1+ (2nd Cir.(N.Y.) Jun 15, 2005) (NO. 04-09015-CV)". The second row is "2 Presseault v. City of Burlington, VT, 2005 WL 1400137, *1+ (2nd Cir.(Vt.) Jun 15, 2005) (NO. 04-1154-CV)". The third row is "3 Moore v. Gray, 2005 WL 1412042, *1 (4th Cir.(N.C.) Jun 16, 2005) (Table, text in WESTLAW, NO. 05-4282)". The fourth row is "4 Oraham v. State of Md. Dept. of Corrections, 2005 WL 1403027, *1 (4th Cir.(Md.) Jun 15, 2005) (Table, text in WESTLAW, NO. 05-4237)". The fifth row is "5 Mason v. Richey, 2005 WL 1403212, *1 (4th Cir.(S.C.) Jun 15, 2005) (Table, text in WESTLAW, NO. 05-1412)". The sixth row is "6 Thomas v. Crosby, 2005 WL 1403026, *1 (4th Cir.(Va.) Jun 15, 2005) (Table, text in WESTLAW, NO. 04-7066)". The seventh row is "7 Lewis v. Fahay, 2005 WL 1403148, *1 (4th Cir.(Va.) Jun 15, 2005) (Table, text in WESTLAW, NO. 05-4179)". The eighth row is "8 Ballard v. Wall, 2005 WL 1415416, *1415416+ (5th Cir.(La.) Jun 17, 2005) (NO. 03-31024)". The ninth row is "9 Chavez v. Brownsville Indep. School Dist., 2005 WL 1403453, *2+ (5th Cir.(Tex.) Jun 15, 2005) (Table, text in WESTLAW, NO. 04-40463)". The tenth row is "10 Hall v. Audas, 193 F.3d 519, 519 (5th Cir.(Tex.) Aug 25, 1999) (Table, text in WESTLAW, NO. 99-20085)". The eleventh row is "11 Mashburn v. Allen, 2005 WL 1404469, *1+, 2005 Fed.App. 0264P, 0264P+ (6th Cir.(Ohio) Jun 16, 2005) (NO. 03-3972)".

A KeyCite Alert result

Use the Table of Authorities Service to Check the Status of Underlying Precedents

The Table of Authorities service displays a list of the cases cited in an opinion with corresponding KeyCite flags. Use this information to see if the underlying precedent relied on in a case has been eroded since the decision was rendered. Click **Table of Authorities** in the left frame while the text of a case is displayed in the right frame to access the Table of Authorities service.

Verifying 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 were when he was free.”

Using a Pinpoint Cite

One way to access the quoted text is to use the Find service with the pinpoint cite; i.e., if you type **914 f2d 849** in the *Find this document by citation* text box and click **GO**, Westlaw will retrieve the case at page 849. Browse the page for the quoted language and compare it to the text in your brief.

Using the Locate Feature

If you prefer, you can use the Find command with the Locate feature to access the quoted text with the Locate terms highlighted. Begin by typing **914 f2d 846** in the *Find this document by citation* text box and click **GO**. When the case is displayed, click **Locate in Result** in the left frame to display the *Locate Search Terms* text box. Type “**rudimentary duty of safekeeping**” and click **Search**. Then click the right **term arrow** until the portion of the case from which the quotation is taken is displayed. Now you can check the text of the quote in your brief against the text on Westlaw.

QuoteRight®

QuoteRight is a research tool that automates quotation checking. It is available in the software application version of Westcheck (as opposed to WestCheck.com). To use QuoteRight, download the WestCheck software at west.thomson.com/software.

Check Again with KeyCite and WestClip

Before you submit your brief, use KeyCite again to verify that your cases and statutes are still good law and to check the status of the authority the opposing counsel has cited. Review your WestClip results to see if database searches have retrieved any documents that need to be addressed in your brief.

