

PROFESSIONAL LEGAL RESEARCH

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 with KeyCite®, 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 and texts 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).
- 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).

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) or click **Help** on Westlaw® for a live help session.

To retrieve an article on Westlaw, use the Find service when you know the citation. For example, to retrieve 34 UCLA L. Rev. 431, type **34 ucla l rev 431** in the *Find by citation* text box in the left frame of the tabbed Law School page, then click **Go**. The Find service is available in the left frame of most tabbed 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)

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

Westlaw offers two methods to search for documents—Natural Language and Terms and Connectors. In addition, you can use KeySearch® to identify key numbers and terms related to your legal issue.

NATURAL LANGUAGE SEARCH METHOD

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.

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

standard of review for excluded expert testimony

TERMS AND CONNECTORS SEARCH METHOD

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.

To retrieve Illinois state cases that discuss the standard of review on appeal of a summary judgment, access the Illinois Cases database (IL-CS). If Terms and Connectors is not already selected, click the **Terms and Connectors** tab, then type

“summary judgment” /s scope standard /3 review

KEYSEARCH

KeySearch is a search tool, powered by the West Key Number System®, that identifies key numbers and terms based on the topics you select from an easy-to-use list of topics. KeySearch then runs a query created by a West attorney-editor. It retrieves documents that contain key numbers, such as cases with West headnotes, as well as documents that don't contain key numbers, such as law review articles and cases without West headnotes.

To access KeySearch, click **Key Numbers** at the top of any page, then click **KeySearch** under *Browse Key Numbers*.

Get the Most Recent Cases with WestClip®

WestClip is a clipping service that runs your Terms and Connectors searches on a regular basis and then delivers the results to you automatically or notifies you that results are available. Use WestClip to receive citations of newly decided cases and other documents that may have a bearing on your argument.

To create a WestClip entry, click **Alert Center** at the top of any page. At the Alert Center Directory, click **Create** in the *WestClip* section. The WestClip: Create Entry page is displayed. Type a database identifier and Terms and Connectors search in the appropriate text boxes. You can also create a WestClip entry from a search result. Click **Add Search to WestClip** at the top of the result list.

Learn from Other Briefs

BRIEFS DATABASES

Westlaw includes thousands of appellate court briefs that are contained in a variety of jurisdictional and topical databases. 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 into how opposing counsel might argue the other side of the case.

Access a briefs database by clicking its database identifier in the *Briefs and Court Documents* section in the right frame of the Law School page. You can also use the Westlaw Directory to access additional briefs databases. Click **Directory** at the top of any page, then click **Briefs** under *Litigation*. Click a database name to access the database, or click a folder name to view additional databases.

You can search briefs databases by issue; by party, attorney, or judge name, if available; or by docket number. For example, at a database search template, type one or more parties' names in the *Parties* text boxes or type an attorney's name in the *Attorney* text box. 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 TP-ALL database. Restrict your search to the prelim (pr) and title (ti) fields, and type

pr,ti("moot court")

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.

MONITOR CITATIONS WITH KEYCITE ALERT

KeyCite Alert automatically notifies you when a new document is added to Westlaw that changes the KeyCite result for authority you've cited in your brief. To create a KeyCite Alert entry, do one of the following:

- Click **Alert Center** at the top of any page. At the Alert Center Directory, click **Create** in the *KeyCite Alert* section, then type your citation in the *Citation* text box and click **Go**. The KeyCite Alert: Create Entry page is displayed.
- From a displayed document, click **Monitor with KeyCite Alert** on the Links tab in the left frame. The document's citation is automatically entered in the KeyCite Alert wizard. Click **Next** to continue through the steps of creating your entry.

USE THE TABLE OF AUTHORITIES SERVICE TO CHECK THE STATUS OF UNDERLYING AUTHORITY

The Table of Authorities service displays a list of the cases cited in an opinion along with their KeyCite status flags. Use this information to see whether the authority underlying the opinion has been eroded since the opinion was rendered. While viewing a case, click **Table of Authorities** on the Links tab in the left frame to access the Table of Authorities.

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 Find service with the pinpoint citation. At the tabbed Law School page, type **914 f2d 849** in the *Find 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.

USE THE LOCATE FEATURE

Alternatively, you can use the Locate feature to access the quoted text after you retrieve the case. Type **914 f2d 846** in the *Find by citation* text box and click **Go**. When the case is displayed, click **Locate in Result** in the left frame. At the Locate Search Terms page, type **duty /s safekeeping** in the *Locate* text box and click **Locate**. To view the Locate terms, which are highlighted, click the **Term** arrows. Now you can check the text of the quote in your brief against the text on Westlaw.

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 west.thomson.com/westlaw/guides.