

American Board of Trial Advocates™



Washington Chapter Newsletter September 2023

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PRESIDENT'S MESSAGE



Dear Members,

We are back from attending the most recent National Board Meeting held in Whistler, BC. It was a joy spending time with fellow ABOTA members Lish Whitson and Sim Osborn.

Lish Whitson is an ABOTA Stalwart, over the years he has attended just about every National Board Meeting and he keeps our chapter relevant on the national

stage. Not only does he attend, Lish works tirelessly including serving as Co-Chair of the Constitution and Bylaws Committee. He is regularly called on for his thoughts and opinions from our national leaders. What I have noticed most about Lish is that his actions always align with his words.

Sim Osborn, a former ABOTA Washington President and currently serving as one of our National Board Representatives, also attended the Whistler meeting. Sitting next to him at the meetings are a joy and seeing his commitment is inspiring. Our chapter is fortunate to have members like Lish and Sim and I am grateful to have their support during my tenure.

As we near the end of summer, I would like to remind our members that in my view, the biggest challenge for our chapter and National ABOTA is membership. It has been harder for attorneys to get the 10 jury trials as Lead Counsel to qualify for membership. Retiring members are outnumbering our new members. I encourage each of you to identify members that exemplify our vision and mission. ABOTA envisions equal justice for all in our vibrant and civil democracy. The mission is to promote the American civil justice system and to preserve the Seventh Amendment right to a civil jury trial.

In recent weeks we have seen attacks on jurors who served on the Georgia grand jury. ABOTA stands resolute in its condemnation of the actions taken by certain citizens to intimidate jurors who were performing essential roles within our judicial system. Such conduct toward jurors is simply intolerable. ABOTA fervently supports the principles that are the bedrock of a functional democracy, recognizing the justice system must operate free of intimidation. ABOTA firmly underscores the imperative of citizens working together harmoniously to ensure fairness and justice in our court system.

Another of the dedicated missions of the American Board of Trial Advocates are defending the independence of our judiciary and adherence to the rule of law. Jurors must be free to exercise their judgment without concern for the popularity of their decisions. Personal attacks and threats on jurors undermine the proper administration of our system of justice and diminish public confidence in our form of governance.

Finally, our 2018 ABOTA National President, Cynthia McGuinn, was awarded the Lifetime Achievement Award. This award has only been awarded 11 times in our 64 year history. As she fought through tears by this recognition, Cynthia stated: "I am proud of the work we do". Those simple words are a reminder for us to keep up the great work we do. I close my message with a sense of gratitude to each of you for being a part of this organization.

CIVIL TRIAL TIP OF THE MONTH



This month's Trial Tip is from Washington Court of Appeals **Judge Brad Maxa**.

Judge Maxa is with the Washington Court of Appeals, Division II. He was appointed to the Court of Appeals in 2013. Before becoming a judge, he practiced law for 28 years with the law firm of Gordon Thomas Honeywell in Tacoma, where he specialized in personal injury defense litigation, insurance coverage litigation, and appellate practice.

TIPS FOR WRITING A GOOD BRIEF

As a Court of Appeals judge, I estimate that I read 2,500 to 3,000 pages of briefs each month. Trial judges hearing civil motions probably read similar amounts. Not surprisingly, briefs that are easy to read are more persuasive than confusing ones.

I am not going to try to give advice on the more technical aspects of writing. But I do want to discuss some of the mechanics of good briefs: using an introduction, using headings and subheadings, using short sentences and paragraphs, and using footnotes sparingly. You may have heard all of this before, but repetition is not bad.

Use of an Introduction

At the beginning of the brief, let the judge know what the case is about and what the key issues are. This gives context to the Facts section and allows the judge to more easily determine the important facts. Without this context, it is easy for a judge to be "lost" for the first portion of the brief. And the introduction should tell the judge what result you are seeking.

The introduction can be fairly short in less complicated cases. At the very least, the writer can say, "This case is about _____. We ask the court to

_____.” For example: “This case is about a person who became intoxicated at a bar and recklessly caused a collision that seriously injured [plaintiff’s name]. We ask the court to grant summary judgment in favor of [plaintiff’s name] on liability.”

For briefs involving multiple issues, the writer also may want to outline those issues and the corresponding arguments. And the introduction should highlight key cases or statutes. Again, the writer should explain how the judge should rule on each issue.

However, the introduction should be fairly short. Generally, a page (or less) should suffice. The introduction should provide a quick summary, not a detailed analysis.

Use of Headings

Both the Facts section (if the facts are lengthy or complicated) and Argument section should contain multiple headings.

Headings serve three primary purposes. First, they act to divide the information presented into smaller, more manageable segments. Smaller segments of information are easier to read, understand, and retain. Second, headings provide an outline of the arguments presented in the brief. Reading the headings and nothing else should allow a judge to quickly understand the writer’s arguments. Third, headings can be an effective tool of persuasion.

In the Facts section, specific and descriptive headings can highlight significant facts and lay the foundation for more persuasive arguments. For example, headings like “[Defendant’s name] Drives Away after Drinking Six Beers” and “[Plaintiff’s name] Dashes into Traffic Without Looking” can be effective and memorable, foreshadowing the arguments below.

In the Argument section, every issue in a brief should be “announced” with its own heading. And subheadings and sometimes even sub-subheadings should be used if specific arguments naturally can be divided into segments. These headings provide a road map for the judge. And dividing an argument into shorter “chunks” makes a brief easier to read. I still have PTSD from reading a 47 page brief without a single heading.

Argument headings provide a valuable opportunity to persuade the judge. Generic argument headings are not particularly effective. Headings like “Evidence of Intoxication” or “Proximate Cause” do nothing to advance the writer’s argument.

An effective argument heading should succinctly summarize the writer's argument, using fact-specific language to state the holding the writer is attempting to convince the judge to adopt. For example: "The Witnesses' Testimony that [Defendant's name] was Slurring his Words and Unsteady on his Feet Establish that He was Intoxicated." Or "Because the Accident Reconstruction Expert Testified that No Driver Could Have Reacted in Time to Avoid the Accident, [Defendant's name's] Intoxication was not a Proximate Cause of the Accident."

However, it is important that argument headings be relatively brief. Headings should be a "headline" that summarizes the argument, not a paragraph-length description of all the details of an argument.

Short Sentences and Paragraphs

Short, declarative sentences are easier to read and more persuasive. A judge can get lost in long, rambling sentences. Avoid lengthy introductory clauses. Put the subject and the verb up front so the reader knows where you are going. Any sentence with more than two clauses probably is too long. Any sentence with more than two commas (unless the writer is listing something) probably is too long.

In addition to using short sentences, a brief writer should use simple, short paragraphs. The longer the paragraph, the more trouble a judge will have tracking the writer's argument.

One way to keep paragraphs short is to limit the discussion in each paragraph to one main idea. If the writer branches off into a different argument or different topic, they should start a new paragraph. And even if the writer is still addressing the main idea, they should break the discussion into multiple paragraphs. Any paragraph longer than five or six sentences probably is too long unless absolutely necessary.

Some writers discourage the use of one sentence paragraphs. However, for a judge reading thousands of pages of briefs, a paragraph that is too short is much preferable to a paragraph that is too long.

Use of Footnotes

Footnotes can be helpful for limited purposes. They can offer interesting but not essential background information. They can provide discussion or analysis that is tangential to the main argument. They can identify issues or arguments that will not be addressed in the body. And they can provide citations to the record or to cases that are not directly on point. A footnote essentially should be used as an aside, containing information that is not essential to the primary argument.

However, footnotes should be used sparingly. The excessive use of footnotes can undermine the writer's ability to persuade for at least three reasons.

First, footnotes interrupt the flow of the statement of facts or argument. The more the reader has to stop reading the body of the brief and refer to footnotes, the less effective a brief becomes. Second, judges may only skim footnotes or even ignore them completely, based on an assumption that the writer will put all essential information in the body of the brief. Third, even if the judge does read the footnote, he or she will assume that the information contained therein is less important. Otherwise, the information would be in the body of the brief.

For these reasons a writer should never attempt to persuade a court with an argument contained in a footnote. A footnote is the least persuasive of all legal writing. If an argument contained in the footnote is important, it should be placed in the body of the brief. If the argument is not particularly important, the writer should question whether the footnote is even necessary.

Finally, avoid lengthy footnotes. If a footnote is longer than four or five sentences, it probably should be in the body of the brief.

UPCOMING EVENTS

[November 9th - Masters In Trial](#)

In-Person and Remote attendance options are available. Click the link above to register.

[November 9th - Annual Meeting & Awards Dinner](#)

Join us at the Washington Athletic Club for our Annual Meeting and Awards Dinner. Click the link above to register.

ABOTA - CIVIC LEARNING COUNCIL

CLC-ABOTA Civic Education Grants Feedback

When a grant is awarded, we ask for a report on how the grant impacted the recipients. Below are a few examples of the impact of CLC-ABOTA grants.

I must begin with a huge thank you for the scholarship grant that you gave to Lochburn Middle School. Without getting into specifics, Lochburn has one of the highest free/reduced lunch rates for any middle school in the state. Because of this, often our students don't have the same opportunities that others do. Your

grant helped to cover the cost for 7 of our students to attend the YMCA Youth & Government Legislative Session on May 4-6.

This was a 3-day, overnight trip to Olympia where the students got to be legislators, press, lobbyists, and pages. The students crafted a bill, presented it to a committee, debated with other 8th grade "legislators", and watched as their bill either moved out of committee to the House or didn't. This short description doesn't do the experience justice. The students got to engage with other 8th graders from all over Pierce County and high schoolers from all over the state in a formal and focused environment. My students were amazing and they overcame all of their nervousness to impress many of the people that they worked with.

This would have been much harder to pull off without the support of your organization and I am truly appreciative of the opportunity you gave me and my students.

Sincerely,

Justin Brooks



I returned late last week from DC from the Sphere Summit put on by the CATO Institute. It was AMAZING! So informative. The focus of the week was on civil

discourse and the first amendment with the freedom of speech being the primary topic. We had several speakers including George Will and two representatives (a democrat from Michigan and a republican from Iowa) come to speak on those topics and the importance of civil discourse within our country and our classrooms. We also had presenters from Humanprogress.org who shared their various lesson plans. I am especially excited to use some of their materials on "Centers of Progress" and some of their videos on "Heroes of Progress." Another really great session was from the National Constitution Center in Philadelphia. They have an entire "Constitution 101" curriculum created for teachers to use for free in their classroom.

In addition to the great information we also had the awesome opportunity to have dinner IN the National Archives, which was certainly a highlight. As I arrived early the first day before the start of the conference (due to flights) I was able to go on a tour of the mall and various memorials. The last day, prior to my late flight out I took the afternoon and visited the Holocaust Museum.

Thank you so much for helping me with this opportunity. I used the grant you provide to pay for the airfare, which helped it be financially feasible for me to be gone from my family for a week.

Thank you again!

Tasha Johnson



