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*Tips and Techniques for  
Writing Persuasive,  
Powerful and Practical  
Legal Briefs*

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# *About the Presenter*

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## *Howard S. Suskin*

Howard S. Suskin is a partner in Jenner & Block's Litigation Department and Co-Chair of the firm's Securities Litigation Practice and its Class Action Practice. Mr. Suskin has substantial first-chair experience representing individuals and business entities in civil and criminal securities matters, including class actions alleging securities fraud and misrepresentation claims, derivative actions claiming breach of fiduciary duty, contests for corporate control, insider trading investigations and broker-dealer issues. He serves as an arbitrator with the American Arbitration Association, and for self-regulatory organizations including the Chicago Board Options Exchange, FINRA and the National Futures Association. Mr. Suskin is an active member of the ABA Securities Law Committee, including serving as Co-Chair of the Class and Derivative Actions Subcommittee. Mr. Suskin currently serves as General Counsel for the Chicago Bar Association (CBA), and served previously as a member of the CBA's Board of Managers and as Chairman of the CBA's Class Action Committee, Bench & Bar Committee, Financial & Investment Services Committee and Securities Law Committee. Mr. Suskin is a member of the Advisory Board of Board IQ, a Financial Times publication, and The Deal, has served as a member of the Securities Editorial Advisory Board of Law360, and serves on the faculty of Practising Law Institute. He has lectured extensively and has published numerous treatises and articles on issues relating to arbitrations, class actions and securities law, including serving as editor and co-author of the West Publishing Illinois Civil Litigation Guide, Moore's Federal Civil Motion Practice and Pretrial Civil Litigation, the Illinois Institute of Continuing Legal Education Treatise on Class Actions, and the ABA's Annual Survey of State Class Action Litigation. Members of the Leading Lawyers Network have consistently recognized Mr. Suskin's work in several areas including class actions, commercial litigation, alternative dispute resolution, and securities and venture financing law. He has been named one of the "Best Lawyers in America" for commercial litigation, and has been recognized eight times as a "Top 100 Illinois Super Lawyer."



Mr. Suskin graduated from Northwestern University with distinction, where he was elected to Phi Beta Kappa, and obtained his J.D. degree with honors from the University of Michigan Law School, where he was a member of the Michigan Law Review.

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## Course Description

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### *Course Presentation*

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Effective legal writing is essential to advocating to a court to decide a case in your client's favor. It's therefore important to master techniques for organizing your brief and presenting your arguments to maximize your opportunity to achieve a favorable outcome. This course is designed to share best practices for effective legal writing. It will offer helpful practical tips from an experienced appellate advocate about how to draft briefs efficiently and communicate your written advocacy to the court effectively.

This course, presented by Howard Suskin, co-chair of Jenner & Block's Securities Litigation Practice and Class Action Defense Practice Groups, will discuss ways lawyers can enhance their legal writing.

### *Course Material*

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This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



## Course Learning Objectives and Outcomes

This course is designed to provide the following learning objectives:

Participants will develop an understanding about identifying the rules of brief writing, mastering techniques for writing briefs that communicate your legal arguments clearly, and avoiding the pitfalls of ineffective legal writing.

Participants will gain skills in the areas of effective legal writing and advocacy.

This is a broad fundamental course and is good for a new attorney or as an overview for any attorney.

The primary practice area for this course is Litigation.

This course does not contain substantial Ethics/Professionalism information.

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.



## **Timed Agenda:**

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**Course Author: Howard S. Suskin**

**Course Title: Tips and Techniques for Writing Persuasive, Powerful and Practical Legal Briefs**

<b>Time Format (00:00:00 - Hours:Minutes:Seconds)</b>	<b>Description</b>
00:00:00	Program Start - Introduction
00:03:23	The Introduction
00:05:03	The Facts
00:07:19	The Argument
00:08:21	The Conclusion
00:09:17	Using Argumentative Headings
00:12:11	Making Briefs Clear
00:16:33	Avoid Arcane Words
00:21:20	Footnote Sparingly
00:24:36	Citations
00:28:58	The Rules of Brief Drafting
00:34:03	Always Cite Check the Draft
00:40:58	Always Know at the Outset the Applicable Court Rules Governing Format
00:54:26	Oral Arguments
00:57:55	Course Review, Capsulation and Summary
01:02:08	End Program



# ***Tips and Techniques for Writing Persuasive, Powerful and Practical Legal Briefs***

***Howard S. Suskin***

## **THE RULES OF BRIEF WRITING**

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### ***Organization***

- ***The Brief's Structure***
  - The Introduction
  - The Facts
  - The Argument
  - The Conclusion
- ***Using argumentative headings***
- ***Arguing from the general to the specific***
- ***Using road maps***
- ***Anticipating your opponent's arguments and addressing them***
- ***If there is a statute, start with it***

### ***Making Briefs Clear***

- ***Every paragraph must have a topic sentence***
- ***Every paragraph must come to a conclusion***
- ***No paragraph shall be longer than one-half page***

- *Omit needless words*
- *Avoid sarcasm and hostility; be respectful*
- *Avoid arcane words*
- *Footnote sparingly*

### ***Citations Must Support the Argument***

- *Cases are used to support propositions of law, not statements of fact*
- *State the rule or proposition of law first; then cite the supporting case*
- *State principal legal propositions as declarative sentences followed by a case citation*
- *Do not hide the ball by reserving key holdings for parentheticals or long block quotations*
- *Use parentheticals whenever you use a “see” signal*
- *Use a consistent citation format*
- *Always use jump (or “pinpoint”) cites*
- *Avoid long string cites*

## **THE RULES OF BRIEF DRAFTING**

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- *Every draft you submit should be something you would file*
- *Always cite check the draft before submitting it for editing*
- *Always put your name on a brief you have drafted*
- *Always know at the outset the applicable court rules governing format*



- *Find out if the person in charge of the brief has a preferred format and, if so, follow it from the beginning*
- *Spell check!*
- *Learn to edit your own work*
- *Do not hand in drafts on the day the brief is due*
- *Read the final product*

## Writing the Legal Argument

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The basic outline of a legal argument is one we all learned in law school: introductory paragraph, standard of review, the applicable law, relevant facts from your case (which sometimes can come before the applicable law), synthesis of the facts with the law, and the conclusion. Straightforward, no problem.

But people who have learned the basic rules of grammar and writing when they were in elementary and high school, tend to either forget those rules or ignore them as they age. Don't do that. Get a good book on grammar – Strunk and White's *The Elements of Style* is a good start, but there are many, many more to consult when you have a question as to sentence structure.

Also get yourself a copy of a book on legal writing and keep it nearby. Bryan Garner has become almost the guru of legal style and has many books available. And, make sure you have a recent copy of Harvard's *The Bluebook: A Uniform System of Citation*.

Another thought is to keep a copy of a good thesaurus on your desk. Roget's is the old standby, but you can consult your computer as well – not only is Roget's available but many others are right there at your fingertips.

We all went to law school. We all had to learn the Latin phrases used in the law. But, really, we don't actually remember the meanings of all of those phrases. *Res ipsa loquitur* may be about the only one we actually recall. So why use them in writing? There are some justices and judges who pride themselves on knowing numerous phrases, not only in Latin but other languages, and will pepper their opinions and rulings with those phrases. Generally speaking, though, the judges and justices are just like you and would rather see something in English that can easily explain the thought behind that foreign phrase.

Legalese should be abandoned in all legal writing – from contracts to leases to appellate briefs. The "hereinafters" and such had a life a hundred years ago, so come into the 21st century for gosh sake! If we did not have to use it (as it is expected by the courts before which we practice), we would even do away with the "For the foregoing reasons..." or the "For all the reasons set forth..." The court just read the argument, it knows the reasons you are asking for relief, so just summarize your argument in a sentence or two and ask for the relief sought.

Avoid using clichés. I admit I fall into the "at first blush" trap once in awhile, but there are worse clichés that should really not be included in a written document. For example, the old "accident waiting to happen," or "bone of

contention” should be abandoned. There are many more and, when you read through and edit your brief, find them and eliminate them.

## Read various types of material.

We all have busy schedules, but read a novel (a good, well-written one), read the newspaper, or read a literary magazine. As I wrote previously, you are not writing a novel, but the language used in other types of writings is more picturesque, it is more evocative of the thoughts the writer is trying to express. There is no reason why we cannot use the same language to convey our legal argument to the court.

Let’s say you take the argument heading, above, about the man lawfully walking along the roadside. If the word “lumbered” was used in the argument to describe the man’s gait, it may make a judge believe he was walking with difficulty and was actually in need of assistance of an officer intent on offering his community-caretaking services. The same goes for the use of the word “stumbled” or “swaggered” or even, conversely, “strode.” The fact is, that client was simply walking – with no excessive speed or lack of speed – along the side of a highway as he headed to a fast food restaurant. Use of the simple word, “walked,” therefore set the stage for the court to understand that the client was not doing anything unusual, and was not doing anything to draw unwarranted attention from a police officer driving by.

## On another note (cliché), contractions have no place in a legal document

There are people who will disagree with that. But, a court is entitled to respect and using common contractions do not convey respect. Common contractions can be used in everyday speech (preferably not in oral argument, but it is more acceptable there than in a writing), they can be used in non-legal documents, even, aha, in this outline. But when writing a legal document, no.

Here are just 10 more suggestions for your writing (believe me, there are a lot more than this!):

- 1) Avoid overuse of block quotes – it is almost a guarantee that a court will skip over them
- 2) Do not always refer to your client as the appellant, appellee, respondent, petitioner, and so on – your client has a name so use it
- 3) Do not always refer to your opponent as the appellant, appellee, respondent, petitioner, and so on – you may be opponents on the

legal stage, but your opponent still has a name and it goes a long way toward impressing the court of your professionalism and civility

- 4) Avoid overuse of “that” – learn when to use “which”
- 5) Use active verbs to describe your facts and minimize adverbs and adjectives (is something really “extremely terrible?”)
- 6) Avoid sexist language – use a gender neutral description like a person” or “they” or an occupational description like “lawyers,” unless you are referring specifically to a person whose gender is known (if your client is male, of course refer to him as “he” or “him,” and so on)
- 7) Avoid acronyms or abbreviations unless they are well-known and well-recognized – everyone knows what the IRS is, but do you know that the DCSS is the Division of Child Support Services which is under the DHFS, or the Illinois Department of Healthcare and Family Services; spell out the agency or organization the first time and then you can refer to it by its initials or acronym but try to do so sparingly
- 8) Think back to when you learned how to write a paragraph and use that in your legal writing – topic sentence, expansion on the topic with a few other sentences (please, please avoid single sentence paragraphs!), conclusory sentence (not a sentence that, in actuality is the topic sentence for the next paragraph!)
- 9) Learn the proper use of the serial comma – the comma does, indeed, come before the conjunction prior to the last in your series
- 10) Try to avoid the use of “clearly” or “obviously” – I must admit I use those phrases on occasion but I have been trying to eliminate them from my writing as they can be interpreted as condescending

Finally, at least for now, avoid the use of string citations when making your legal argument. Find the case that best supports your proposition and cite it with the precise page and to the reporter system that is acceptable for your court (check those rules again!). String cites do not impress, and they break up the flow of your argument making it difficult for the court to follow.

And, make sure you properly use the introductory signals: see; see, e.g.; cf., but see; contra.

Now, finally, check your local rules to find out the page limits on your brief. Importantly, find out if sections of the brief like the Points and Authorities, the Issues Presented, the Jurisdictional Statement, or the Appendix count toward that page limit. Depending on how many issues you intend to raise, that page



limit will dictate how long your Statement of Facts will be, how long each of the Arguments will be, and how long your Conclusion or Prayer for Relief will be. Once you find out the page limit, try to cut it down even more. One of the courts in Illinois has a local rule that the Statement of Facts can be no longer than 15 pages. I no longer practice in that court, but I do like to keep the Statement of Facts to that limit so that I can spend a bit more space on the legal arguments.

Now, really, finally, edit, edit, edit. Write your draft, set it aside for a day or so, edit it, set it aside or give it to someone else to read, and edit again. Check your citations for accuracy and relevancy. When you think you are finished, have someone who does not know the case – maybe even a layperson – read the brief for proofreading and for comprehension. Edit again, and then complete your brief and, with hope, file it.

## **Relief Sought or Conclusion**

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For all the foregoing reasons, your appellate brief should be considered... blah, blah, blah. Try to avoid the cliched legal catchphrase of “for all the foregoing reasons.” The court, as I wrote previously, has read the brief and knows the reasons you have set forth, so there is absolutely no reason to waste precious space by writing “for all the foregoing reasons.” “Wherefore” and “Whereas” fall into that same category.

Try to just come to the point. Succinctly summarize, in just a sentence or two, relevant facts and your theory of the appeal, and ask for the relief you are seeking. Your issue may lend itself to a complete reversal, a reversal and remand for further proceedings, a limited remand while the court of review retains jurisdiction – it will all depend on your issue and what the law allows. So just write it, plain and simple.

## **Reply Briefs**

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Reply briefs exist to address any inaccuracies, questionable arguments, or new points made by the appellee in its responsive brief. Reply briefs should not be used to reiterate arguments or, heaven forbid, offer new issues that had not been raised previously.



There are several theories as to whether reply briefs should be filed, and, if one is filed, what it should contain. One such theory is that, assuming oral argument is not ordered (and that is not a given even if argument is requested), the reply brief is your last chance to get your points across to the court; it your client's last chance to have issues presented in full. The problem arises, though, when the reply brief is used as a reiteration of everything that has been written in the initial brief. Not only does the court not appreciate that tactic, but it wastes time and energy of the court and yourself, especially when the reply can be used in a direct, more assertive, and perhaps more creative way to put the nail in your opponent's coffin.

Another theory is that the court does not read the reply brief anyhow so there is no point in writing one. Notably, there has been discussion at many a luncheon that there are justices who actually begin with the reply brief since it is a succinct, punchy document that can really point to what the issues are in a given case.

Personally, whether I file a reply or not depends completely on what my opponent has written and whether there is enough to address in a reply. If there is only one minor point, say a single incorrect reference to the record on appeal, there really is no point in spending my time writing a reply. On the other hand, if my opponent has completely misunderstood the holding of a case I rely on, or attempts to lead the court down a path I have not paved, then I will write a reply.

The introductory paragraph of a reply brief should be a very short summary of what your argument was in the opening brief. After that, try to avoid addressing the errors in your opponents brief or logic paragraph by paragraph. I have seen reply briefs in which the author begins each paragraph as “In the State’s brief, paragraph 1, it is argued...” How boring. Try to summarize your opponent’s theory of the appeal, and then refute it using the law you rely on and contrast it, incorporating the law and your opening argument.

Of course, if your opponent has cited law that directly contradicts your basic premise, deal with it in the reply (hopefully you have not simply avoided the obvious in writing your opening brief – you can run from law that does not help you but you cannot hide). Acknowledge that the law cited by your opponent stands for whatever the proposition is, but then distinguish it or explain why it should not apply in your case.

Finally, if the appellee has not said anything in its brief that requires a reply, then don’t file one. If there is nothing to reply to, the reply brief winds up being just a reiteration of what was already said in the initial brief, and that could not

only be a violation of your local rules but also frowned upon by the judges or justices.

## **Resources**

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### **Resources Specific to this Course**

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In addition, please see the resources cited within the material.

### **Resources for the Legal Professional**

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ABA Center for Professional Responsibility - [www.abanet.org/cpr](http://www.abanet.org/cpr)

Chicago Bar Association - [www.chicagobar.org](http://www.chicagobar.org)

Commission on Professionalism - [www.2civility.org](http://www.2civility.org)

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - [www.ilbaradmissions.org](http://www.ilbaradmissions.org)

Illinois Department of Financial and Professional Regulation - [www.idfpr.com/default.asp](http://www.idfpr.com/default.asp)

Illinois Lawyers' Assistance Program, Inc - [www.illinoislap.org](http://www.illinoislap.org)

Illinois State Bar Association - [www.isba.org](http://www.isba.org)

Illinois Supreme Court - [www.state.il.us/court](http://www.state.il.us/court)

Lawyers Trust Fund of Illinois - [www.ltf.org](http://www.ltf.org)

MCLE Program - [www.mcleboard.org](http://www.mcleboard.org)

