

At A Glance

Legal Writing Basics: Tips for Writing Briefs and Memos

To write a persuasive brief or an effective memo:

- Clearly and succinctly state the issues;
- Proofread the entire paper several times—no errors in grammar, punctuation or spelling; and
- Make sure all citations are accurate and in the correct form.

Five Style Rules for a Brief

- 1. Avoid alphabet soup.** The alphabetical short forms for the names of the parties, statutes and agencies become meaningless. Use the persuasive force of words.
- 2. Use the parties' names.** Don't refer to the parties by their status (e.g., "the defendant") unless court rules require otherwise.
- 3. Rarely use block quotations.** Try to find pertinent quotations of fewer than 50 words.
- 4. Use argumentative headings.** For example, instead of "*The Relevant Provisions of the FFDCA*," state "*This Court Should Grant Summary Judgment Because There Is No Private Right of Action Under the Federal Food, Drug and Cosmetic Act.*"
- 5.** Keep the brief as short as possible.

Five Style Rules for a Memo

- 1. Clearly and concisely state the facts** in short, simple sentences.
- 2. Identify and define** the legal issues in the case.
- 3. Research, select and read** the cases and statutory authority relevant to the facts and legal issues.
- 4. Apply the law** to the facts.
- 5. Organize your analysis** of the law and the facts.

Hermann's Rules of Style

- 1.** Write short sentences.
- 2.** Place only two or three paragraphs on a typed page.
- 3.** Use the active voice.
- 4.** Always use an action verb rather than the "to be" verb and an adjective.
- 5.** Start each paragraph with a topic sentence.
- 6.** Use headings and sub-headings to break up the brief or memo.
- 7.** Given a choice, use the word "that" instead of the word "which."
- 8.** Do not start a sentence with the word "However."
- 9.** Do not use the phrase "In order to." Instead, use "To."
- 10.** Read the final work with an eye toward finding and correcting each of the nine errors listed above.

Information extracted from *How to Write: A Memorandum from a Curmudgeon* by Mark Hermann, © 1997, American Bar Association Litigation, Fall, 1997, 24 Litigation 3

Write a more effective appellate brief or memo using the LexisNexis® services

U.S. Supreme Court appellate briefs on LexisNexis at www.lexis.com

Go online and look at some of the U.S. Supreme Court appellate briefs to get an idea about structure, tone and length of a brief.

To access this source:

1. Sign on www.lexis.com
 2. Click Legal > Cases – U.S. > **US Supreme Court Briefs**
 3. Type your search terms in the open field of the Search Terms template.
 4. Click **Search**.
- **Lexis® Search Advisor**
will find cases and secondary sources that are pertinent to your legal issues.
 - **LexisNexis® Case Summaries**
provide concise, targeted synopses of cases, with each case summary containing:
 - **Procedural Posture** that describes the case's procedural history, i.e., how the case arrived before the court.
 - **Overview** provides a brief review of the court's holding on the legal issues raised.
 - **Outcome** reviews the procedural disposition of the case.
 - **LexisNexis® Core Terms**
list the terms and concepts that are integral to this case.
 - **LexisNexis® Headnotes**
are the key legal points of a case, selected by a team of legal editors, and drawn directly from the language of the court. LexisNexis Headnotes let you link to Lexis Search Advisor for a more in-depth search on your topic.
 - **The FOCUS™ feature**
lets you search for specific terms or phrases within a case.
 - **More Like This and More Like Selected Text**
help you find cases similar to a case you can use to support a point of law.
 - **Shepard's® Citations Service**
is needed for the full range of editorial analysis and history needed to verify the status of a case.
 - **CheckCite® v. 8.7**
Use CheckCite v. 8.7 software to automatically get, *Shepardize*®, or print cases from your word-processing documents. Updating is fast and easy with CheckCite as you verify the accuracy of your work, pinpoint the right facts, and save valuable research time.

LexisNexis Customer Support

Whenever you need help at school or at work, call LexisNexis Customer Support:

1-800-455-3947



LexisNexis®

It's how you know™

An appellate brief should contain:

Cover Page

Donald J. Willy, Petitioner, v. The Coastal Corporation, et al., Respondents.
No. 90-1150
1990 U.S. Briefs 1150
October Term, 1991
July 30, 1991

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit
Brief for Petitioner Donald J. Willy

Michael A. Maness, Counsel of Record for Petitioner, 1900 North Loop West, Suite 500, Houston, Texas 77018, (713) 680-9922, (713) 680-0804 (FAX)

Questions Presented

Did the district court violate Article III § 2 of the Constitution by awarding attorney's fees, claimed by defendants who wrongly invoked subject-matter jurisdiction by mistakenly removing the case from a state court, as a sanction for asserted bad-faith litigation by the plaintiff, who correctly resisted the unconstitutional exercise of federal judicial power, and who did not impede, obstruct, or delay resolution of any jurisdictional issue?

List of all Parties

Petitioner Donald J. Willy was the plaintiff in the district court and the appellant in the court of appeals.

Respondents in this Court are the coastal corporation, Coastal States Management Company, Inc., James R. Paul, George L. Brundrett, Charles F. Joens, William L. Dunker, and E.C. (Bud) Simpson.

Table of Contents

(optional depending on length)

Table of Authorities

Cases:

Aetna Life Insurance Co. v. Hawaorth, 300 U.S. 227 (1937)

Aldinger v. Howard, 427 U.S. 1 (1976)

Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975)

American Fire & Cas. Co. v. Finn, 341 U.S. 6 (1951)

Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936)

Bender v. Williamsport Area School District, 475 U.S. 534 (1986)

Blacklock v. Small, 127 U.S. 96 (1888)

Ex parte Burr, 9 Wheat. 529 (1824)

Constitutional Provisions

The relevant provisions of Article III of the Constitution of the United States, Title 28 of the United States Code, and F.R. Civ. P. 11 are reproduced in the appendix to the petition for certiorari, beginning on page 57.

Statement of the Case

Donald J. Willy worked as an in-house environmental attorney for the Coastal Corporation in Houston from 1981 until 1984, when he was fired ... None of Willy's claims arose under or was created by a federal statute, and he did not allege entitlement to any federal remedy ... (text omitted due to length)

Summary of the Argument

1. Article III of the Constitution limits the judicial power of the United States to cases and controversies over which Congress has conferred subject-matter jurisdiction ... (text omitted due to length)

Argument

The district court violated Article III § 2 of the Constitution by awarding attorney's fees, claimed by defendants who wrongly invoked subject-matter jurisdiction by mistakenly removing the case from a state court, as a sanction for asserted bad-faith litigation by the plaintiff, who correctly resisted the constitutional exercise of federal judicial power, and who did not impede, obstruct, or delay resolution of any jurisdictional issue. . . . (text omitted due to length)

Conclusion

The district court's sanctions order, and the judgment of the court of appeals affirming it, are unconstitutional and should be reversed.

Respectfully submitted,

Michael A. Maness, Counsel of Record for Petitioner, 1900 North Loop West, Suite 500, Houston, Texas 77018, (713) 680-9922, (713) 680-0804 (FAX)

July 1991

An open memo should contain:

Heading or Caption

Smith v. Jones
Supreme Court, Ames County
Abner Price, J.

Identify Yourself and Partner Addressed

Date: April 15, 2000
To: Norman White
From: Wesley Black
Re: Appeal from lower court judgment against our client Jones

Define Issues

Question Presented:

You have inquired: Did a mutual mistake about the character of a parcel of land entitle our client to recover his deposit and avoid performance of a fully-integrated purchase contract that did not disclose the mistake on its face?

State the Facts Requiring Analysis

Facts:

Jones contracted with Smith to purchase a parcel of land in the Borough of Lafayette, County of Ames ... (text omitted due to length) ... There is no evidence that Smith knew of the unique character of this small tract. Jones demanded the return of his deposit and refused to close. Smith brought this action for specific performance and Jones claimed the return of his deposit.

Give Procedural History

Lower Court:

Plaintiff Smith moved for summary judgment, relying in his supporting affidavit only on the contract of sale. Smith argued that the contract was fully integrated ... (text omitted due to length) ... The court granted Smith's motion. In its opinion, the court reached two conclusions:

1. Evidence as to any correspondence or negotiations between the parties prior to the contract was barred by the parol evidence rule.
2. The mistake between the parties, if any, did not relate to the quality of the land, but only to its value, as to which both parties took the risk.

List Cases and Authorities

Cases and Authorities:

The parol evidence rule and mutual mistake:

UCC § 2-202 (statement of rule)

Restatement of Contracts Second § 214, Comment *c. Invalidating Cause*; Comment *d. Remedies*, Illustration 7
Farnsworth, *Contracts*, Third Edition 1999, § 7.4, p. 442

Murray on Contracts, Third Edition 1990, § 85, p. 400

Edwards v. Trinity & Brazos Valley Ry., 118 S.W. 572 (Tex. 1909)

Mutual Mistake as to Basic Assumption in Contract:

Restatement of Contracts Second § 152, Comment *b, Basic Assumption*, Illustration 6

Farnsworth, *Contracts*, Third Edition 1999 § 9.3, pp. 624-630

Murray on Contracts, Third Edition, 1990, § 91D.1., 2., pp. 444-47

Dover Pool & Racquet Club v. Brooking, 322 N.E. 2d 168 (Mass. 1975)

Sherwood v. Walker, 33 N.W. 919 (Mich. 1887)

Wood v. Boynton, 25 N.W. 42 (Wis. 1885)

Smith v. Zimbalist, 38 P.2d 170 (Cal. 1934)

Relate the Facts to the Law

Discussion:

1. Jones is entitled to void the land contract because of the mutual mistake of the parties ... (text omitted due to length). A contract is voidable "where a mistake of both parties as to a basic assumption on which the contract was made has a material affect on the agreed exchange of performance ..." Restatement Second § 152(1).
2. Parol evidence rule does not bar evidence of mutual mistake by the parties as to a basic assumption that induced the contract ... (text omitted due to length).

State Your Conclusions and Recommendations

Conclusion:

1. The contract between Jones and Smith is voidable by Jones because of the mutual mistake of the parties as to a basic quality of the land involved; i.e., that it could be mined for methane gas in the same way as the land around it.
2. Evidence as to the mutual mistake is not barred by the parol evidence rule because the mistake is as to a basic assumption on which the contract was made.
3. Summary judgment for Smith should be reversed and a trial ordered to permit Jones to present evidence of the prior correspondence and negotiations between the parties and of the findings and conclusions of the geologist.