



Litigation Practice Tip - February 2021

Who cares about introductions anyway?

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Pop quiz about the following opening to a brief:

This Memorandum of Points and Authorities is filed in opposition to Defendant Amalgamated Widget's (hereinafter "AW's") Motion for Judgment on the Pleadings (hereinafter "MJP") seeking to dismiss Plaintiff Ronny Righteous's (hereinafter "Plaintiff" or "Righteous") Third Amended Complaint (hereinafter "TAC"). AW is avaricious and maleficent, and its MJP is dilatory, derogatory, and ridiculous, and therefore should be denied, stricken, and sanctioned.

What, if anything, is wrong with that opening paragraph?

- The first sentence didn't state what date either the motion or complaint was filed;
- The second sentence should have used a better thesaurus;
- Just about everything

You are right; the correct answer is (c). The example above does nothing to advance the goals of an Introduction.

The goals of an Introduction and why we should care

What are those goals and why should we care? Starting with the second question, think about the many news articles, blogs, posts, etc. that appear on your screen every day. If you are like most people, you read the ones that capture your attention and promise to tell you something you don't know or that will at least entertain you. If the first few sentences don't accomplish that, you move on.

Judges presumably are no different. While they are supposed to read everything we submit, the opening paragraph can dictate their state of mind in plowing through the rest of the brief. First impressions matter.

A good introduction should accomplish two main goals:

- (1) make the court *want* to rule in your favor, and
- (2) make the judge think that the law and facts *require* that result.

Of course, the opening paragraph or even the entire Introduction can't completely accomplish those goals; the rest of the brief will have to reinforce initial impressions. But those impressions should be the right ones.

Given those goals, how do we judge the first sentence in the sample opening paragraph

above? Not kindly. The sentence reports information that the reader already knows [the title of the brief], can wait until later in the brief to learn [everybody's name and designation], or is unnecessary [some of the parentheticals]. The sentence does nothing to influence the judge's view of the case and is also boring and difficult to read.

Stay away from insults and hyperbole

But what about the second sentence with all those insulting adjectives? Won't that capture the court's attention? Perhaps, but not in a good way. Here is what the Sixth Circuit said about a brief written in a similar tone:

There are good reasons not to call an opponent's argument "ridiculous" The reasons include civility; the near-certainty that overstatement will only push the reader away (especially when, as here, the hyperbole begins on page one of the brief); and that, even where the record supports an extreme modifier, "the better practice is usually to lay out the facts and let the court reach its own conclusions." . . . But here the biggest reason is more simple: the argument that State Farm derides as ridiculous is instead correct.

Bennett v. State Farm Mut. Auto. Ins. Co., 731 F.3d 584, 584–85 (6th Cir. 2013) (citation omitted).

In other words, insulting your opponents or their arguments at best only tells the court about your state of mind, without providing any useful and persuasive information or argument. And at worst, such tactics can antagonize the judge and doom your case.

Getting introductions right

Okay, now we know what *not* to do, but how do we begin to convince a judge to want to rule in our favor and to conclude that there is little choice but to do so? **Here are three tips to drafting better Introductions:**

- Don't start the Introduction until you have written the rest of the brief. At that point, you will have a better idea of what facts and law are most important, and the first thing you want the judge to read.
- Try beginning with a few sentences that (1) describe the plight of your client as relevant to the main legal issue; (2) something bad that the opposing party has done; or (3) both. Do so by stating facts, propositions of law, or both that (a) advance your argument and (b) cannot reasonably be disputed.
- Then carefully edit to keep the paragraph as short as possible. The more unnecessary words you omit, the more powerful your message can be.

Here is an example:

Angie Christensen's family was denied public assistance because the Department of Social Services counted the family as having money it never will receive: her husband's wages and unemployment garnished to pay child support owed to another family. The result for the Christensens and similar families throughout California thwarts the legislative purpose behind both CalWORKs and child support: to secure adequate financial support to all California children.

That opening paragraph, while far from perfect, describes in two sentences the plight of a sympathetic client and something bad the opposing party did, using indisputable facts and law. While more would need to be written in both the Introduction and body of the brief to

win the appeal, at least the reader is left with the impression that “what was done to the Christensens seems like an injustice and legal error.”

If you can give your judge that impression, you are well on your way to winning for your client.

For questions or advice, please reach out to Richard Rothschild at rrothschild@wclp.org.



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