



## Litigation Practice Tip - September 2021

### Feedback Is Good For You Only If You Digest It

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Many attorneys will tell you that they really like to get feedback on their briefs. The same people will also tell you that they really like the taste of kale.

In fact, what we actually want to hear is our work is brilliant, and that not a single word needs to be changed. Good feedback, like kale, can taste bitter, but like kale (or so they say), it's good for you. At least it can be if you know how to approach it. Three steps are involved.

#### **Step 1: Arrange the feedback**

Find somebody with a reputation as a good editor. Hopefully, that will be your immediate supervisor, but even if that is not the case you probably know someone who fits that description. I am usually available, even in cases where I am not co-counsel,<sup>[1]</sup> and I expect that my colleagues at Western Center would be as well. Tell that person you want to improve your brief-writing skills and are looking for honest and detailed feedback.<sup>[2]</sup>

Make sure you review and engage with the edits and comments even if you only have time to do it after the brief is filed. Alerting your editor that you would like feedback is an implied promise that you will follow up once you receive that feedback.

#### **Step 2: Write a genuine first draft, not a "rough draft"**

Do not slap together some random thoughts and call it a first draft. Make your best arguments as well organized and worded as possible, then spend a *lot* of time editing the draft yourself before handing it to the editor.

That does not mean that the draft will have to be great or won't need lots of editing and comments. But it does mean that it's the best work you are able to do at the time. Editors usually know the difference and are loathe to spend more time editing than the author has apparently spent drafting.

Even with your genuine first draft, expect a lot of edits. In trainings for supervisors I have attended, knowledgeable writing professors have cautioned that making too many edits on first drafts is psychologically counter-productive. They have advised editors to make a few global suggestions, followed by successive drafts in a multi-week process. Unfortunately, in the real world of law practice, particularly in legal services offices, drafts rarely arrive more than a couple days ahead of deadline. Conscientious editors often have little choice but to make substantial revisions.

#### **Step 3: Consciously interact with the feedback**

This is the most important step and perhaps the most difficult.

Let's say your editor is Maria. What do you do when she sends back a brief whose primary

color appears to be red? Take a deep breath, and pick your ego up off the floor. Carefully read through the comments, which are usually self-explanatory, and the edits, which often are not. For each edit, there are three acceptable internal reactions:

- “I understand the edit and why it’s an improvement.” Think of ways you can apply that knowledge. If, for example, Maria changed a sentence from passive to active voice, look for other sentences in the brief that need the same change.
- “I don’t understand the edit and will ask Maria about it.”
- “I understand the edit, but don’t agree with it and will present my case.” Perhaps knowing the substantive issues better than your editor, you might be right. As an editor, I like it when that happens, and will freely admit to the author that I was wrong. (Excessive smirking and end zone dances on their part are discouraged, however.) It shows that the author is thinking strategically.

The key is engaging with the feedback and working to improve, not just this brief but future ones as well. This process, and maybe some kale, will make you stronger. Your editors, and more importantly, your clients, will appreciate that.

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**[2]** If you don’t have an upcoming brief, you can seek feedback on a research memo.

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