



WRITING EFFECTIVE POINT HEADINGS*

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Each argument in a brief begins with a complete sentence called an argument heading or point heading. The heading is a concise summary of the argument in that section and is set off from the text that follows. Argument headings are conventionally in capital letters and are single-spaced. Few students, and in fact, few practitioners, however, realize just how important and effective good point headings are. Point headings in briefs are more than just the organizing tools they are in objective memos. Good point headings are often the cornerstone to a good brief, whether at the trial level or on appeal.

Point headings can serve at least three crucial roles in brief writing. As a prewriting tool, many writers find point headings a very effective way to create an outline. As you lay out the foundation to your argument, you are also laying out the point headings and vice versa. Writing point headings before you start actually writing can help the writer realize how far their argument has come and what further development is necessary to reach finality. Second, almost universally, people will read the point headings to a brief, even if that is all they read. For that reason alone, good point headings are necessary to either pull the reader in to read the whole brief, or to inform the reader who will not finish the brief as to what your main arguments are. A point heading may be your only chance to inform a busy judge as to what your argument is. If your point headings are complete encapsulations of your overall argument, then even the judge who only reads your point headings will know what the premise of your argument is. Good point headings also serve a third purpose: they provide a figurative rudder and guide to the reader. They not only highlight where the argument is and where it will go next (as a guide), but they can also help push the reader in that direction through effective rhetoric (as a rudder). To that extent, point headings serve a crystallizing purpose. They should distill the essence of the argument, and encourage the reader to follow along and reach your conclusions for themselves.

So what makes a good point heading good? As in many other areas of legal writing, there are no absolute rules when it comes to point headings, but because the object is to achieve the goals listed above, there are certain accepted principles about what makes a one heading better than a another.

- 1) Headings should always be argumentative rather than topical or even assertive. The same is true for subheadings. Make sure to never follow a main heading with only one subheading. Subheadings are generally in Title Case and are underlined.

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- 2) The point headings should be related to the questions presented, but should not mirror them exactly. While the point headings should state, usually affirmatively, the resolution of the issues raised in the Question Presented, the point headings should not simply restate the question as an affirmative sentence. Why pass up another opportunity to persuade through artful expression? Different rhetoric styles will appeal to different readers, and point headings are another chance to convince the reader who wasn't convinced from the Question Presented. If the Question Presented is more narrowly focused, make the point headings more general, and vice versa.
- 3) Effective argument headings will identify the applicable law; the way in which the law applies to the facts of the case; and the conclusion that follows from that application.
- 4) While not every relevant fact can fit into a point heading, the writer should try to imbed the heading into the memory of the reader through the use of powerful wording and precise facts while avoiding adjectives and adverbs that may only serve to exaggerate the argument.
- 5) Point headings should always use tight, concise, well-thought-out language that works to engage the reader. You should continually re-craft your point headings as your work through different drafts of your brief, working to hone your language to be the most persuasive it can be.

On the following pages are some examples of good and not-so-good point headings.

Example 1.

Not so good: WHETHER THE SUIT IS BARRED BY LACHES.

[This is an ineffective point heading because it is a question that does not help the reader in any way. Answering that question is the job of the writer, not the reader, who usually looks for more guidance in a heading. This is just a sentence fragment identifying an issue.]

Good: THIS SUIT IS BARRED BY LACHES.

[This is better, but it is essentially just an answer to the question presented. The reader has no sense of the “why” or “because”]

Better: THIS SUIT IS BARRED BY LACHES BECAUSE IT WAS BROUGHT TWENTY-FIVE YEARS AFTER THE ISSUANCE OF THE ORIGINAL CERTIFICATE.

[This is much better. After reading the “because” part, the reader knows exactly where the writer is going with his argument.]

Example 2.

Not so good: THE PLAINTIFFS SHOULD NOT GET DAMAGES.

[This is a pretty ineffective point heading. The sentence is just a direct response to the Question Presented and therefore does not advance the writer’s rhetoric.]

Good: THE COURT SHOULD NOT AWARD THE PLAINTIFFS DAMAGES FOR THE COSTS OF RAISING THEIR NORMAL, HEALTHY DAUGHTER TO MAJORITY.

[This is better, especially because the language is more precise and powerful. Still, the writer has failed to give the reader the “why.”]

Better: I. THE COURT SHOULD NOT AWARD THE PLAINTIFFS DAMAGES FOR THE COSTS OF RAISING THEIR NORMAL, HEALTHY DAUGHTER TO MAJORITY.

A. Suzanne’s Birth Did Not Injure The Plaintiffs Because They Sought Sterilization For Non-Economic Reasons.

B. Awarding Full Child-Rearing Costs Harms The Mental Health Of Unwanted Children And Will Discourage Doctors From Performing Needed Sterilizations.

[This is much better. It really helps to crystallize the argument by using subheading and the writer is using powerful language to sway the reader with both legal and public policy arguments, which are effectively separated into subheadings.]

Example 3.

- Not so good: THE TRIAL COURT’S DECISION IS REVERSIBLE.
[Yes, the decision is reversible, but what decision, and why is it reversible?]
- Good: THE TRIAL COURT’S DENIAL OF APPELLANT’S MOTION TO SUPPRESS DIANA’S STATEMENT SHOULD BE REVERSED.
[Now we know what decision we are talking about, and the writer has affirmatively stated her goals, but she has failed to give us the why.]
- Better: THE TRIAL COURT ERRED IN ADMITTING DIANA’S STATEMENT BECAUSE HER STATEMENT WAS THE FRUIT OF AN ILLEGAL POLICE SEIZURE AND THEREFORE MUST BE SUPPRESSED UNDER THE WONG SUN DOCTRINE.
[Now we know what should have been suppressed and why. Also, the writer has given the reader a guide as to the area of law that will be discussed in this section.]

Example 4.

- Not so good: IS THERE JURISDICTION FOR REVIEW OF A REFUSAL TO REOPEN A MEDICARE PROVIDER’S COST REPORT UNDER THE FEDERAL QUESTION STATUTE, 42 USC §1331.
[Once again, this is essentially a question that does not help the reader in any way.]
- Good: FEDERAL COURTS DO NOT HAVE JURISDICTION UNDER 28 USC §1331 TO REVIEW REOPENING DENIALS.
[This is better, but just answers the question presented. The reader has no sense of the “why.”]
- Better: I. FEDERAL COURTS DO NOT HAVE JURISDICTION UNDER 28 USC §1331 TO REVIEW REOPENING DENIALS BY INTERMEDIARIES
A. 42 USC §405(H) Prohibits Review Of Reopening Denials Under 28 USC 1331.
B. Preclusion Of Judicial Review Under 28 USC 1331 Is Consistent With Bowen V. Michigan Academy Of Family Physicians.
[This is much better. Even though the technical language is fairly dense, the writer has done a good job of creating accessibility for the reader by separating the arguments into subheadings that deal with separate issues. The writer has applied the facts of the case to the underlying legal principles.]
- Sources: Alan D. Hornstein, Appellate Advocacy in a Nutshell (1998).
Robert J. Martineau, Appellate Practice and Procedure (1987).
Myron Moskovitz, Winning an Appeal (1985).
Introduction to Advocacy: Research, Writing and Argument (6th ed.1996).