



## FROM MEMO TO APPELLATE BRIEF<sup>1</sup>

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The transition from memo writing to brief writing may seem overwhelming at first, but **briefs and memos actually have more in common than you might think**. Almost all the skills that you learned your first semester—including legal research, legal reasoning, and organization—apply to both memos and briefs. This handout will provide you with some basic comparisons between memo and brief writing and help to ease your transition from objective to persuasive writing.

### AN OVERVIEW: MEMO VS. BRIEF

MEMO	BRIEF
<p><b>Purpose:</b> Objectively inform the reader.</p> <ul style="list-style-type: none"> <li>• Explain what the law is, so the reader can make an informed decision.</li> <li>• Predict the outcome of a legal question based on a particular set of facts.</li> </ul>	<p><b>Purpose:</b> Inform AND persuade the reader that your application of the law to the facts is the correct one.</p> <ul style="list-style-type: none"> <li>• Let the purpose inform all the choices you make, from your overall organization to your word choices.</li> </ul>
<p><b>Audience:</b> Colleagues, co-counsel, or the client.</p>	<p><b>Audience:</b> The judge(s) who will decide your case and their clerks, opposing counsel, your client, and the public.</p>
<p><b>Scope:</b> Generally, the scope of the memo is laid out for you by your supervising attorney (or your professor).</p> <ul style="list-style-type: none"> <li>• You may be constrained by the specific question or other financial/time constraints.</li> </ul>	<p><b>Scope:</b> Generally, you should strive to include all the relevant arguments that prove your client should prevail.</p> <ul style="list-style-type: none"> <li>• Stick to the issues the judge (or professor) has asked you to brief, or the ones that are of central importance to the case.</li> <li>• You may be constrained by court rules, a word limit, or other financial/time constraints.</li> <li>• You are limited to the issues raised below.</li> </ul>
<p><b>Stance:</b> Analyze objectively to make a prediction.</p> <ul style="list-style-type: none"> <li>• Because memos form the basis for legal decisions, be honest about the strengths and weaknesses of your client’s case and what the law does and does not allow before giving advice.</li> </ul>	<p><b>Stance:</b> Make the best case for your client.</p> <ul style="list-style-type: none"> <li>• Use both facts and law to persuade.</li> <li>• Emphasize favorable arguments and minimize the force of opposing arguments.</li> </ul>

<sup>1</sup> Originally drafted by Osamudai Guobadia (2004), edited by Kala Sherman-Presser (2009), Katie Wallat (2012), and Natalie George (2024).

## THE THEORY OF THE CASE<sup>2</sup>

One of the challenges of transitioning to brief writing is grasping the concept of the Theory of the Case, a tool unique to persuasive writing.

**The Theory of the Case is the unifying idea or concept of the case.** It is the completion of the sentence: “My client should win because . . .” It is the implicit message in your brief that will tie together the factual, legal, and policy issues. It is not a legal theory like negligence or self-defense. Rather, it is a simple, factual theory that may help your reader empathize with your client and see the facts in a way that is most favorable to your client. While the facts explain what happened, and the law explains the legal implications of what happened, the theory explains *why* your client should prevail.

**The Theory of the Case should be evident throughout your brief,** particularly in your Summary of the Argument, Statement of the Facts/Statement of the Case, and throughout your Argument. The theory should mesh with your organizational framework and be supported by the facts of your case and relevant law. It should be subtle, woven throughout your document, so that your reader is able to articulate it after reading your brief, even though you don’t state it outright.

**When determining an effective Theory of the Case,** brainstorm a number of potential theories and consider the advantages and disadvantages of each one. Your intended audience, the legal and factual framework of the case, and the organization of your brief may influence your choice among legal theories. You should also consider what theory your opponent is likely to choose, as this may influence your decision to choose one theory over another.<sup>3</sup>

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<sup>2</sup> For some, the theory of the case is known as the *theme*. For others, the theory of the case and the theme are distinct concepts. For a discussion of theory and theme in the context of jury trials, see Writing Center handout, “[Writing for Trials](#).”

<sup>3</sup> DIANA R. DONAHOE, TEACHINGLAW.COM: THE ROAD TO LEGAL PRACTICE (2023), <https://teachinglaw.com/writingRewriting/Persuasive%2BWriting/Designing%2Bthe%2BTheory%2Bof%2Bthe%2BCase/>.

## EXAMPLES

- You are representing a party injured in a car accident. Your *legal theory* might be that the other driver was negligent, but your *Theory of the Case* might be that “he was in a rush.” Throughout the brief, you highlight facts that support your Theory of the Case, such as that the driver was speeding, late for an appointment, or not paying attention.<sup>4</sup>
- If you represent an indigent client who stole food to feed his family, your Theory of the Case might be that your client had no choice. Tugging at the judge’s heartstrings is often an effective way to get her to rule in your favor.<sup>5</sup> Using this theory, you could craft your Statement of Facts to emphasize your client’s difficult financial situation. In your Argument section, you would highlight these facts to bolster your legal arguments.
- You are representing a state prison in a case where a prison warden has imposed several restrictions on the prisoners. Instead of treating each restriction as separate and unrelated from one another, a unifying theory could be that the restrictions, as a set, constitute a necessary and appropriate security plan for the prison. Each restriction is then valid as an integral part of a prison security plan, and you’ve presented your client’s actions in a favorable light.

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<sup>4</sup> Id.

<sup>5</sup> Id.

## COMPONENTS OF THE MEMO AND BRIEF

In addition to differences in purpose, audience, scope, and stance, the brief and memo also have slightly different components. Although the exact format and content of a brief may vary in each jurisdiction, the body of the brief typically contains several parts that are similar to those in the memo: the Statement of the Issues Presented for Review, the Summary of the Argument, the Statement of the Case, the Argument, and the Conclusion. The chart below compares the main components of the memo and brief.<sup>6</sup>

MEMO	BRIEF
<p><b>Question(s) Presented:</b> Presents an objective statement of the legal questions to be answered in the memo.</p> <ul style="list-style-type: none"> <li>• Includes 3 elements:               <ul style="list-style-type: none"> <li>○ the jurisdiction or applicable law,</li> <li>○ the legal issue, and</li> <li>○ the most legally significant facts.</li> </ul> </li> </ul>	<p><b>Statement of Issue(s) Presented for Review (the “Issue Statement”):</b> Differs from a Question Presented by being framed persuasively.</p> <ul style="list-style-type: none"> <li>• Includes 3 elements:               <ul style="list-style-type: none"> <li>○ the jurisdiction or applicable law,</li> <li>○ the legal issue, and</li> <li>○ the most legally significant facts.</li> </ul> </li> <li>• An effective Issue Statement should suggest an outcome, using the relevant facts and the applicable law to elicit an answer that affirms the analytical reasoning of the brief.</li> </ul>
<p><b>Brief Answer:</b> Provides a short answer to the question(s) presented.</p> <ul style="list-style-type: none"> <li>• Usually includes a brief explanation of the legal basis for that answer.</li> <li>• Generally, there are no formal citations or quotations in this section.</li> </ul>	<p><b>Summary of the Argument:</b><sup>7</sup> A statement that previews the major conclusions in your brief and the reasons supporting those conclusions.</p> <ul style="list-style-type: none"> <li>• Should be self-contained so that a busy reader could read only this section and still understand the essence of your argument.</li> <li>• Your Theory of the Case should be apparent in your Summary of Argument.</li> <li>• Generally, there are no formal citations or quotations in this section.</li> </ul>
<p><b>Statement of the Facts:</b> An objective and complete description of the legally significant facts relevant to the discussion section.</p> <ul style="list-style-type: none"> <li>• Keep in mind that if you use a fact in your analysis, it should also appear in your Statement of the Facts.</li> <li>• The beginning or end of this section may include the procedural history of the case (to</li> </ul>	<p><b>Statement of the Case:</b><sup>8</sup> Combines the procedural history and an account of the facts as told from your client’s perspective.</p> <ul style="list-style-type: none"> <li>• The facts should be framed persuasively. The use of storytelling techniques to grab the reader and appeal to their emotions can be particularly effective.</li> <li>• Should seek to make the court sympathetic to</li> </ul>

<sup>6</sup> For further discussion on all of these elements, consult: Mary Barnard Ray and Jill J. Ramsfield, Legal Writing: Getting it Right and Getting it Written, (6th ed. 2018); Kristen Konrad Tiscione, Legal Writing—From Advice to Advocacy, A Contemporary Approach, 310-72 (2021).

<sup>7</sup> A Summary of Argument should “contain a succinct, clear, and accurate statement of the arguments made in the body of the brief” and not “merely repeat the argument headings.” Fed. R. App. P. 28(a)(8).

<sup>8</sup> Some courts require two separate sections: (1) the Statement of the Case describing only the procedural history and (2) the Statement of the Facts detailing the relevant facts of your client’s situation. Again, always consult the court’s rules or your professor’s requirements for specific guidelines.

<b>MEMO</b>	<b>BRIEF</b>
<p>the extent there is any).</p>	<p>your client by emphasizing the favorable facts and downplaying the unfavorable ones, without dishonestly omitting important legal facts.</p> <ul style="list-style-type: none"> <li>• Your Theory of the Case should also be apparent to the reader from reading the facts section.</li> <li>• Facts should generally have citations to the record below.</li> </ul>
<p><b>Discussion:</b> The heart of the memo, which objectively answers the question presented.</p> <ul style="list-style-type: none"> <li>• Organized—according to good small- and large-scale organization—to maximize understanding of the legal issues.<sup>9</sup></li> <li>• Presents synthesized rules of law and uses that law, as well as various forms of legal reasoning, to address arguments on both sides before predicting an outcome.</li> <li>• Includes citations to all legal authority.</li> <li>• Guides the reader through the analysis using roadmaps and headings.</li> </ul>	<p><b>Argument:</b> The heart of the brief, containing your persuasive application of the law to your client’s case.</p> <ul style="list-style-type: none"> <li>• Organized to maximize the persuasiveness of your arguments while still making them easy to follow.</li> <li>• Uses the same basic concepts of legal writing as the memo, including rule synthesis, legal reasoning, and large- and small-scale organization.</li> <li>• Highlights strengths in your client’s case and minimizes its weaknesses, presenting the law from the perspective most favorable to your client.</li> <li>• Anticipates and refutes legitimate counterarguments.</li> <li>• The Theory of the Case should be woven throughout your Argument.</li> <li>• Includes citations to all legal authority.</li> <li>• Guides the reader through the argument using roadmaps and persuasively framed point headings and topic sentences.<sup>10</sup></li> </ul>
<p><b>Conclusion:</b> A summary of your analysis.</p> <ul style="list-style-type: none"> <li>• A more thorough summary of the analysis than provided in the Brief Answer.</li> <li>• Rarely includes citations.</li> </ul>	<p><b>Conclusion:</b> A statement of exactly what you want the court to do.</p> <ul style="list-style-type: none"> <li>• A court will only grant relief that is requested, so the conclusion should state the relief sought precisely and succinctly.</li> <li>• Unlike in a memo, the conclusion in a brief should not have any law or reasoning.</li> <li>• It is often a single sentence, i.e., “For the reasons above, the lower court’s decision should be affirmed.”</li> </ul>

<sup>9</sup> For further discussion on organization, see the Writing Center handout, “[Crafting Mid-level Organization](#).” For further discussion on formatting, including how to create a Table of Contents and a Table of Authorities, see the Writing Center handout, “[Formatting a Legal Document in Microsoft Word](#).”

<sup>10</sup> For further discussion and specific examples, see the Writing Center Handout “[Writing Effective Point Headings](#).”

**In addition to the components outlined in the chart above, for a brief, most courts also require a:**<sup>11</sup>

- **Cover Page:** The Cover Page typically includes the title of the brief, the caption, the docket number, the names of the attorneys filing the brief, and the date of filing.
- **Table of Contents:** The Table of Contents lists all sections and point headings and their respective page numbers.
- **Table of Authorities:** The Table of Authorities lists the statutes, cases, and other authorities cited in your brief and their respective page numbers.
- **Jurisdictional Statement:** The Jurisdictional Statement provides the basis for the court’s subject matter jurisdiction (i.e., the authority to hear the subject matter of the claim). It should include citations to the applicable statute and state the relevant facts establishing jurisdiction.
- **Standard of Review:**<sup>12</sup> The Standard of Review states the level of deference the reviewing court must give to the lower court’s decision and includes a citation to cases that use the appropriate standard. To determine the applicable standard of review for your case, you will need to research prior cases in your jurisdiction that address the same issues you are addressing in your brief.

## CONCLUSION

Being persuasive is all about being strategic. Your Theory of the Case should inform each decision you make—from telling a story with the facts to framing your rule statements. To learn more about persuasive writing techniques, see the Writing Center handout, “[Persuasive Writing](#).”<sup>13</sup>

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<sup>11</sup> Always remember to refer to your court’s rules (or your professor’s requirements) for specific requirements.

<sup>12</sup> For further discussion on Standards of Review, see the Writing Center handout, “[Identifying and Understanding Standards of Review](#).”

<sup>13</sup> For more persuasive writing techniques, see also DIANA R. DONAHOE, TEACHINGLAW.COM: THE ROAD TO LEGAL PRACTICE (2023), <https://teachinglaw.com/writingRewriting/Persuasive%2BWriting>.