



## WRITING EFFECTIVE POINT HEADINGS<sup>1</sup>

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In a brief, point headings organize the Argument section into its primary and subsidiary parts.<sup>2</sup> A point heading is a concise and conclusory statement about a legal issue written in a complete sentence. Your point headings serve both organizational and persuasive functions: they define the structure of the argument in addition to inviting the reader to draw conclusions that advance your client's interests. Therefore, when drafting your brief, you should view your point headings as an essential tool of written advocacy and devote time to crafting them.

### **1. The organization of your point headings lends clarity to the arguments.**

Point headings supply the structure for the brief's Argument section. However, point headings also appear in the Table of Contents at beginning of the brief and are often the reader's introduction to your arguments. Therefore, when read together, your point headings should offer the reader a complete and persuasive overview of your arguments. This section focuses on effectively organizing your point headings.

After you have created a heading indicating the start of your argument (often simply the word "Argument") and laid out the roadmap previewing the issues, you will write a **major heading(s)**. The major heading articulates a complete and independent ground for relief and will correspond to the Question Presented or issue before the court. The number of major headings is dictated by the number of issues before the court. Although each major heading stands independent of the other major headings, you should arrange them in a logical order. For example, this order might correspond to the relative strength of each argument, from strongest to weakest.

A major heading can be sub-divided into **minor headings**. Minor headings are necessary when more than one legal argument is needed to support the major heading's conclusion. In this way, minor headings develop the contention in a major heading by offering specific reasons. Your minor headings might constitute the various elements of a claim, or in a "totality of the circumstances" analysis, each minor heading would represent a factor the court should consider when balancing. You should never have only one minor heading beneath a major heading. If you have included only one minor heading, try integrating that idea into the major heading.

A minor heading may be further sub-divided into **subheadings**. Subheading should be included when additional arguments are needed to develop the conclusion set forth in the minor

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<sup>1</sup> Revised by Clinton Oxford in 2018. Original document authored in 2003 by Kara Thompson and Zach Brez.

<sup>2</sup> The advice in this guide pertains primarily to persuasive writing, such as a legal brief. Many of the lessons regarding point headings can also apply in objective writing, such as a memo, but not all.

heading. Generally, the suggestions offered for developing minor headings relative to the major headings applies. Again, there should never be a single subheading.

While deciding on the appropriate **number of minor or subheadings** is more of an art than a science, these sub divisions will depend on the facts of the case and the legal test you are applying. It is helpful to consider the question from both the perspective of the writer and reader. Below are some questions you might ask yourself:

- Is a particular argument so lengthy (spanning multiple paragraphs) that a reader might become lost? If so, the argument may benefit from being divided into discrete parts using a minor heading or subheading.
- Is your argument complex, depending on multiple criteria for support? Consider using minor headings and subheadings so each criterion can be analyzed in turn.
- Is the subject matter of any two minor headings or sub headings similar? If so, consider consolidating the subheadings, rewriting a subheading that incorporates the relevant information.

The **format** of all point headings will likely be dictated by the jurisdiction in which your case is filed as well as the conventions of your practice area. In general, each point heading level in your argument should be formatted differently to set them apart visually for the reader. For example, if you work for a law firm, there may be a template dictating those conventions. Below you will find a sample Argument section diagramming the three tiers of point headings.

### **Argument**

*→ Roadmap setting forth the organization of the section.*

#### I. MAJOR HEADING #1

*→ Mini-roadmap setting forth organization of this section.*

A. Minor Heading #1

B. Minor Heading #2

#### II. MAJOR HEADING #2

*→ Mini-roadmap setting forth organization of this section.*

A. Minor Heading #1

B. Minor Heading #2

1. *Subheading #1*

2. *Subheading #2*

C. Minor Heading #3

## **2. Point headings provide persuasive conclusions on legal issues.**

Point headings provide your reader with concise and persuasive summaries of your arguments. Because you are writing to convince the court to rule in a particular manner, point headings should not merely be topical or abstract discussions of the law. Rather, point headings should identify the applicable rule, convey your conclusion on the issue, and relate legally significant facts and reasoning. When writing a single major point heading with no subdivisions, the heading should convey all of these features. However, if your main point heading will be supported by subsidiary arguments, the main point heading can simply state the legal conclusion. Then, minor headings and subheadings can state conclusions that communicate legally significant facts and reasoning.

Providing this level of detail in a point heading is essential given that your reader may only have time to skim the headings. For example, a point heading may be your only chance to inform a busy judge of your arguments. So, when you are finished writing your document, ask yourself: if the reader only reads my table of contents, will he understand my argument?

As a prewriting tool, many writers find that point headings are an effective way to create an outline. As you lay out the foundation of your argument, you are simultaneously beginning to create your point headings. Drafting your point headings before you begin writing can also help ensure that your arguments proceed logically and without repetition. However, as you flesh out your argument, the point headings you initially drafted should also evolve by integrating key facts and reasoning that support the conclusions you are trying to advance.

As in many other areas of legal writing, there are no absolute rules when it comes to point headings, but you will be well served by the following principles:

- All headings should be persuasive rather than topical. However, be careful not to order the court to do anything.
- When possible, you should aim to draft point headings in the affirmative. Such statements are more convincing than those written in the negative.
- 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.

### 3. Examples

Conveying the relevant information in a concise manner can be challenging. The examples below offer some advice for improving weaker point headings.

*Example 1.*

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**Not so good:**

- I. WHETHER MR. LEE'S FOURTH AMENDMENT RIGHTS WERE VIOLATED.

→ *This heading poses a question when it should convey a conclusion.*

**Good:**

- I. THE OFFICERS VIOLATED MR. LEE'S FOURTH AMENDMENT RIGHTS.

→ *This heading is better because it states a conclusion. However, it would benefit from the inclusion of legally significant facts*

**Better:**

- I. THE OFFICERS VIOLATED MR. LEE'S FOURTH AMENDMENT RIGHTS WHEN THEY CONTINUED TO SEARCH HIS CAR AFTER HE REVOKED CONSENT.

→ *This example is better than the prior two because it states a conclusion, provides the court with a concise reason why that conclusion is correct, and incorporates a legally significant fact.*

Example 2.

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**Not so good:**

- I. MRS. SMITH'S GREENHOUSE IS NOT WITHIN THE CURTILAGE AFFORDED FOURTH AMENDMENT PROTECTION BECAUSE IT IS NOT IN CLOSE PROXIMITY TO MRS. SMITH'S RESIDENCE, WAS NOT USED FOR DOMESTIC ACTIVITIES, AND MRS. SMITH TOOK MINIMAL STEPS TO PREVENT PUBLIC OBSERVATION OF THE INTERIOR.

→ *This heading contains too much information, which would confuse a reader. It would benefit from being broken into subheadings.*

**Good:**

- I. MRS. SMITH'S GREENHOUSE IS NOT WITHIN THE CURTILAGE AFFORDED FOURTH AMENDMENT PROTECTION.
  - A. The greenhouse is not in close proximity to Mrs. Smith's residence and no steps were taken to prevent the public from observing the greenhouse's interior.
  - B. The greenhouse was not used for intimate, domestic activities.

→ *This heading is better because the main heading is concise, and the subheadings draw conclusions that can be analyzed, in turn. This heading would benefit from breaking the factors posed in heading A. into two, so they can be analyzed in turn.*

**Better:**

- I. MRS. SMITH'S GREENHOUSE IS NOT WITHIN THE CURTILAGE AFFORDED FOURTH AMENDMENT PROTECTION BECAUSE IT WAS USED TO GROW MARIJUANA FORTY YARDS FROM THE HOME.
  - A. The greenhouse is located on an unenclosed pasture forty yards from the home.
  - B. Mrs. Smith took no steps to conceal the greenhouse's interior from public view.
  - C. The greenhouse was only used to cultivate marijuana.

→ *This is the best example because the main heading provides legally significant facts, and the subheadings are further divided into discrete conclusions written in the affirmative.*

*Example 3.*

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**Not so good:**

- I. THE TRIAL COURT'S RULING CONSTITUTES REVERSIBLE ERROR.

→ *This heading contains an accurate statement, but it does not specify what the ruling entailed and why it is reversible.*

**Good:**

- I. THE TRIAL COURT'S RULING CONSTITUTES REVERSIBLE ERROR BECAUSE MR. SMITH'S CHECKBOOK WAS ILLEGALLY SEIZED AND MS. BUSHONG'S STATEMENT WAS MADE AFTER THE ILLEGAL SEIZURE.

→ *The reader now understands what decision should be reversed and why. This statement, however, contains two independent grounds for reversal and would benefit from being broken into two main headings.*

**Better:**

- I. MR. SMITH'S CHECKBOOK SHOULD BE SUPPRESSED BECAUSE IT WAS SEIZED WITHOUT A SEARCH WARRANT.
- II. MS. BUSHONG'S STATEMENT TO THE POSTAL INSPECTOR SHOULD BE SUPPRESSED BECAUSE IT OCCURRED AFTER THE CHECKBOOK WAS ILLEGALLY SEIZED.

→ *These headings state the two different grounds for relief in a concise, affirmative manner. In your conclusion, you will ask the court to reverse the district court's decision, so you can be more concise by removing that language from the point heading.*

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