

APPELLATE DEFENDERS, INC.

EFFECTIVE BRIEF WRITING: LESS IS MORE

Presenters: Michele Cella and Alice Shotton, Staff Attorneys

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A. INTRODUCTION

Who says “less is more”?

Does your work style have any impact on the length of your briefs?

What tools can you use to achieve shorter but more effective briefs?

Do you consider the importance of policy arguments as you read the record?

- Welf. & Inst. Code §202(a)
- *Cynthia D. v. Superior Court of San Diego County* (1993)
5 Cal.4th 242
- Justice Haller’s Formula for Reversal

B. ORGANIZING YOUR OPENING BRIEF

Organization of brief when filed v. what sections do you draft first.

- **Order When Filed:**
Headings/Introduction/Factual Statement/Argument
- **What Order Do You Follow When Writing Brief?**
Factual Statement/Argument/Headings/Introduction?

C. REPLY BRIEFS - HOW ARE THEY DIFFERENT FROM OPENING BRIEFS?

APPENDIX "A"

NUTS AND BOLTS OF BRIEF WRITING

1. **Check Spelling/Grammar/Formatting**
2. **Word Choice**
 - a. **Use Plain English**
 - cut the legalese, use common words:
 - aforesaid, aforementioned: the
 - adequate number of: sufficient or enough
 - in the event that: should or if
 - is able to: can
 - notwithstanding the fact: despite or even
 - prior to: before
 - given that: because
 - the instant case: here
 - due to the fact that: since or because
 - avoid compound constructions
 - instead of "at that point in time" say "then"
 - instead of "subsequent to" say "after"
 - instead of "the parties are in agreement" say "the parties agree"
 - compliments of Candace Hale, 2012 CADC Conference:
 - "Search for these often-deadening words.
 - That** ("A review of California law shows that...becomes "California law provides....")
 - Of** ("The purpose of this principle is to protect a juror's privacy...." becomes "This principle protects a juror's privacy.")
 - In** ("The law in California" becomes "California law.")

Any word ending in “ion” (“The court’s action” becomes “The court ruled.”)

It (“It is essential that the state must show” becomes “The state must show.”)

b. Use active voice rather than passive, unless you want to de-emphasize your client’s conduct.

Active: Mr. Jones drove his truck onto the sidewalk, striking Ms. Smith and breaking her arm.

Passive: John Jones’ truck was driven onto the sidewalk. Sandy Smith was then struck and her arm was broken.

3. Avoid Abstract Words: they leave murky images in reader’s mind and your point can be lost. To de-emphasize a point or fact, use abstract words.

Abstract: Joe Smith approached Sam Jones, speaking in a loud voice.

Concrete: Joe Smith ran up to Sam Jones, shouting at him.

Abstract: Joan had a variety of psychological problems that affected her mental state.

Concrete: Joan was diagnosed as being manic-depressive and suffering from post-traumatic stress syndrome, all of which precluded her from forming the intent to kill.

4. Avoid Lengthy Quotations

- Weave most important parts of quote into sentences.
- Lengthy block quotes leave reader wanting to skip over it; your point will be lost.

5. Pay Attention to Sentence Length

- Use clear, simple sentences; keep them 20-25 words long
- Start sentences with short punchy words
- Vary the logical links between sentences
 - typical: moreover, accordingly, however
 - varied: bottom, also, under that approach, in short, to this end, because, then, for example, in each case, nowhere, in any event, of course, instead, to being with, indeed, thus
- Rather than begin a sentence with the link, place it close to the verb
 - The EPA thus regards the state review . . . (not *Therefore the EPA regards the state review . . .*)

6. Paragraph/Sentence Structure

- Emphasize good facts by placing them at beginning and end of paragraph or sentence; de-emphasize bad facts by burying them in middle of paragraph or sentence.

APPENDIX "B"

INTRODUCTION

Emily and Rodney T. are the grandparents of three children who were split up into two different foster homes. The grandparents filed a section 388 petition, asking the court to reunite the children in their home, so that they could grow up together. The court found that the grandparents had made a prima facie case for relief and scheduled a hearing.

But on the morning of that hearing, the court changed its mind. It had heard from the social worker that Emily and Rodney had lost custody of child around ten years ago. It also received a one-page letter on the morning of the hearing that claimed there were several substantiated allegations of abuse against the grandparents, again at least a decade before.

The grandparents' lawyer asked for a continuance so that he could rebut these claims. Specifically, he asked for time to provide the actual documentation about them and complete information.

But the court denied a continuance and denied the petition for placement without even holding a hearing. The court believed Emily and Rodney were legally barred from taking custody of the children unless they received an "exemption" from the social worker. It also believed that the evidence presented at the last minute proved that relief should not be granted. Based on these beliefs, the court denied the petition summarily.

As explained below, the court abused its discretion in denying a hearing on this basis. First, even if a relative has a prior child welfare history, he or she does not need an "exemption." That process is

reserved only for relatives with a criminal conviction. What's more, the court strayed from the normal process for a section 388 petition when it denied a hearing based on superficial evidence in opposition. The court's incorrect application of a legal standard and its acceptance of superficial information as true both amount to an abuse of the court's discretion.

The court also erred in a second way. Faced with brand new allegations, Emily and Rodney reasonably asked for a continuance. Their lawyer had already begun investigating the claims, but could not complete the task because he received the one-page letter on the morning of the hearing. The court erred when it denied this request. It failed to recognize that the children would have benefited from a correct placement decision, and it wrongly believed that the investigation process could take months to complete. Thus, the court abused its discretion when it refused any additional time to rebut the serious claims made at the last minute.

Emily and Rodney deserved a hearing on their petition. But so did the children. They deserved a full consideration of their right to live together, as brother and sisters, in the only home that had offered to take them all.

Emily and Rodney ask this court to reverse the order denying a hearing on their petition. They also ask the court to conditionally reverse the order terminating parental rights, pending the outcome of the section 388 hearing.

APPENDIX "C"
REPLY BRIEF HEADINGS

ARGUMENT

1. Respondent Concedes Appellant's Visitation With His Son Was Regular Under the Statutory Requirement.
2. Respondent Mischaracterizes the Evidence In Arguing a Failure to Prove a Beneficial Relationship.
3. Respondent Misreads the Evidence in Arguing Father Misused His Visit Time With Alfred.
4. Respondent Again Misreads the Narrative in Argument About Father's Attentiveness at Visit.
5. Respondent Has Taken Father's Statements Out Of Context In Attempting to Claim a Waiver On the Issue of Terminating Rights.
6. Respondent Avoids An Honest Evaluation of the Parent-Child Relationship By Arguing Extraneous and Ill-founded Evidence.
7. Respondent Cites *Autumn H.* Without Explanation As to How It Supports Its Position Regarding Benefit.
8. Respondent Declares Father Not In Parental Role But Gives No Support For Its Position.
9. Respondent Errs In Citing *Teneka W.* In Support Of Its Incidental Benefit Claim As Benefit to Alfred Is Substantial and Strong In this Case.
10. Respondent Mistakenly Interprets The Record In Arguing A Lack Of Ethnic/Cultural Information In the Social Worker Reports.

ARGUMENT

1. Father Joins the Arguments in Mother's Reply Brief

2. The Backbone of Respondent's Argument Is an Insinuation That Mother and Father Are Presently Engaged in an Intimate Relationship and Thus Are Involved in a Manner Other Than What They Had Described, and That, Therefore, They Cannot Be Trusted to Maintain Boundaries and Protect the Children.

3. Respondent Seeks to Trivialize What Mother Did in the Past in Order to Support the Risk Findings.

4. Respondent's Position Regarding Standing Fails to Factor in Father's Statutory and Constitutional Interest in Family Integrity

5. Respondent's Argument Is That Because the Children Could Possibly Even Yet Be Placed With Grandmother, There Is No Prejudice.