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Briefly: Sweat the small stuff – it matters

By: [Haynes Hansen](#) and [Eric Magnuson](#) February 22, 2022

The brief is done. You spent years working up the case, and months thinking through the legal arguments, chasing down every last citation as you wrote the appellate brief. Now it's done, and all that's left to do is file it and wait for the court to adopt it wholesale, right?

Hold on. Even the best writer's best work needs editing. After hours of staring at those pages, the details of the citations start to grow into each other, all that carefully coiffed legal argument begins to lose the plot-line, and the typos have grown like weeds — but the writer is too close to it to see the obvious.

Yes, no matter how badly you would like that brief just to be done, it needs editing, and it needs to be edited by someone who didn't write it. Here are some tips for those taking on the less glamorous—but always necessary—work of appellate brief editing.

1. Sweat the small stuff after all.

It's tempting to think that we left the Blue Book behind in our 1L year of law school and that citation form doesn't matter. After all, who is really paying attention to that wrongly italicized comma or to that incorrectly abbreviated case name? Well, you never know who is paying attention. And more importantly, a persuasive brief has to be reliable. Messy citations can be an express route to losing credibility. See Eric Magnuson, *Briefly: There Is a Reason for all Those Pesky Rules*, *Minnesota Lawyer* (March 16, 2020). Judges and law clerks rely on your citations, and when the citations are inaccurate, they have to find your cited case on their own. That is more than irritating; it makes them wonder what else you got wrong. Like it or not, accurate citations are an ingredient in the recipe for a confidence-inspiring brief.

We'd all love to draft perfect citations on the first go-around. But for us mere mortals, an attentive editor is the best way to error-free citations. Editors should be on the lookout for names that should be abbreviated, incorrect reporter names, and appropriate full and short-form citations. Word processing software lets you move text around with great freedom as you edit your brief, but it does not alert you when you move that short form citation several pages ahead of the full form, or cut out the full form completely. Investing in the online version of the Blue Book ensures that you are not following rules from a previous version. Above all, citations should clearly and easily direct the reader to the original source, and citation rules serve that ultimate purpose.



Some editors and authors mark the citations in some way so they can be checked quickly in the final editing process. Highlighting in yellow, or printing the brief out and putting a small mark above every word in the body of the brief and a mark above every character in the citations forces the editor's brain to catch small mistakes that might otherwise go unnoticed.



Haynes Hansen (left) and Eric Magnuson

2. What would your eighth-grade English teacher say?

One of the most important jobs of the editor is to make the brief easier to read. This process again starts with the details. The editor should keep a sharp eye out for things like weeding out inconsistent tenses, eliminating legal jargon, and identifying hard to read fonts. Be ready to tell writers that, no, it is not helpful to write headings in all capitals. See Eric Magnuson & Lisa Beane, *Briefly: How Not to Yell at the Court*, *Minnesota Lawyer* (February 18, 2019). It can also be helpful to spot and eliminate the passive voice, unless keeping the attention off the subject of the sentence is advantageous. More generally, if a sentence doesn't make sense to the editor, it probably won't make sense to the judge. Good editing can help avoid that outcome.

This is also a good time to look at the table of contents. A quality table of contents will give the reader a detailed idea of what to expect from the brief. And if someone knows in advance how a brief is organized and how that organization ultimately shapes into the argument, it will be easier for the reader to digest the contents. Judges often read tables of contents and conclusions first to orient themselves to the case. There are no unimportant parts of a brief because you don't know how a particular judge attacks the large volume of information she or he has to review each week. Too many briefs have tables of contents thrown together as an afterthought, and those briefs lose a chance to persuade with a big picture summary of the case and arguments.

When evaluating whether a brief is easy to read, don't just point out the problems. A good editor points out the rule that will fix an error and suggests revisions to clarify language.

3. You've seen the trees, now look at the forest.

A brief can have perfect, flowing language and ornate, precise citations and still lose the day if it just isn't persuasive.

The editor once again plays a critical role here. Is there a step in the legal analysis that the writer missed? Did the writer fail to see an argument from another angle? Is there an absent but critical line of cases? A good editor can also evaluate the overall persuasiveness of the argument and help put together a brief that is sure to convince the court.

The editor should also pay close attention to the organization of the brief. Often, it is a good idea to put the strongest argument first. But some legal issues follow a well-trodden rubric, and courts will expect briefs to follow it.

4. Know thy writer.

The goal of the editor should not be to sand the brief into a one-size-fits-all, standard-issue submission that anyone could have written. There is always more than one way to write a brief, and often there is vitality in a writer's unique voice and perspective—good briefs are often not showy, but they are rarely boring. The editor's job is to enhance and clarify the writer's voice and the writer's work. Is the writer someone who prefers a reserved, academic tone? Is the writer someone who is not afraid of taking an aggressive tone? An editor should be attuned to the writer's philosophy and work in the same direction.

At the same time, the editor should not be afraid to say so if the tone is not right. It is easy for many lawyers to sound too aggressive and too passionate. Just as easily, writers can sound too divested, as though they are unconvinced by their own arguments. An editor can help the writer find the right balance, in particular if the editor has experience with that court or members of the panel.

5. Stick to your principles, to a point.

Editing is not a job for the faint of heart. The editor must tell the writer, often someone highly credentialed and influential, what they did wrong or tell them how they could do it better. But good editors are courageous to a fault, and that courage will benefit all involved. Writers do well not to take insult, but to use editing as a means to turn inward and sharpen their own skills. Of course, the writer has the final say, and editors need to be aware of the point when they should stop advocating for their changes. After all, the editor is a part of the writer's process, not the other way around.

In the end, the court probably will not adopt your carefully crafted and well-written brief wholesale (we're not selling magic beans here). But a well edited brief will be better than one that is not edited, and the improvement will be worth the investment.

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