



What Is the Issue With The Issue?

By Michelle J. Sheehan of Reminger. Reprinted with permission.*

Some say the statement of the issue in an appellate brief is the most important paragraph. It is designed to focus the court's attention on what the parties want the court to decide. So why do so many put the boilerplate word "whether" in front of a sentence and leave the statement of the issue behind?

A well written statement of the issue is hard to write. It must succinctly summarize the entire case in a handful of words. It forces the writer to stop and think about the big picture and what the issues are on appeal. It can be especially difficult for the attorney that tried the case because the issues at trial are not necessarily the focus of the appeal. Thus even if trial counsel oversees an appeal, it can be more productive and efficient to have an attorney experienced in appellate advocacy examine the issues and offer a new perspective on how to win the case on appeal.

A movement exists among writers to change the structure and content of the statement of the issue. The Ohio Ninth District Court of Appeals, in particular, has rewritten its Local Appellant

Rule 7(B)(4) to address how to write an issue. Citing Bryan Garner, the author of *The Elements of Legal Style*, 184 (2002), the Ninth Appellate District encourages a statement of the issue to contain several sentences in a paragraph format of 75 words or less. In fact, the Ninth Appellate District proposes the following format:

Sentence One: A legal premise.

Sentence Two: Facts demonstrating why the legal premise is applicable.

Sentence Three: Close with a question – that does not begin with the word "whether".

The concept of a lengthier issue that incorporates the relevant facts and legal principle may seem novel. When executed properly, however, it sets the stage for the entire brief. The Ninth District Court

Inside this issue:

Appellate Brief Writing	1
Tech Tip: Google Drive	2
Fastcase Webinars	3
Free CLE	3
You and the Legal System: Eviction 101	6
Landlord Tenant Resources	7

Hamilton County Law Library

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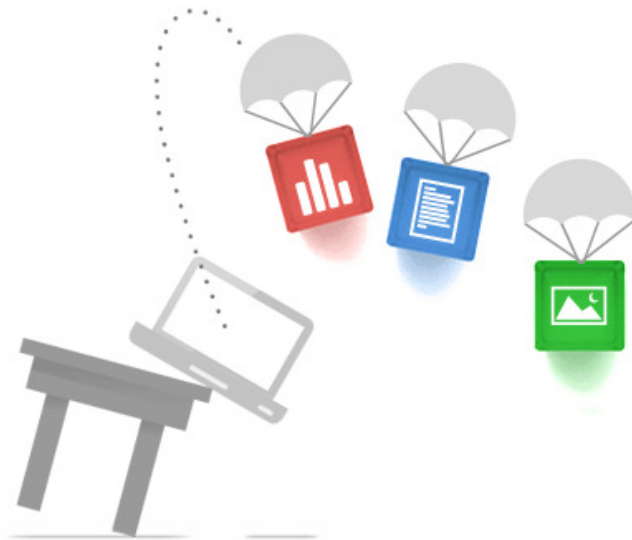
(Continued on page 4)

Tech Tip: Google Drive

Protect, access or share your data from anywhere with anyone. By Julie Koehne, Systems Librarian

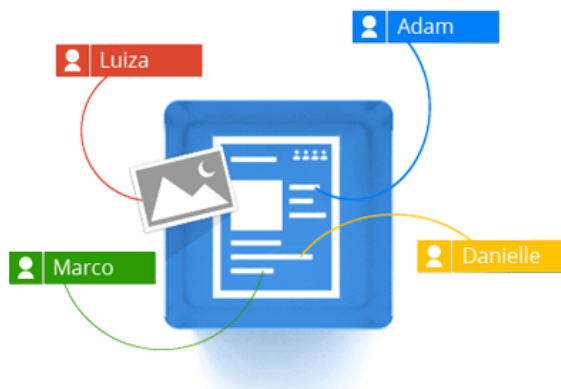
Store your files in a safe place.

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Google Drive is available for:

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Free Fastcase Webinars

Did you know that remote access to Fastcase comes with your Law Library subscription? Join us this summer for free Fastcase training! We will be broadcasting the following webinars here at the Law Library:

Fastcase Legal Research for Paralegals

Tuesday, July 3
10:00-11:00am

Tips for Enhanced Legal Research with Fastcase

Wednesday, August 8
1:00-2:00pm

Keyword (Boolean Search) for Lawyers

Monday, August 27
1:00-2:00pm

To register, call 513.946.5300 or email reference@cms.hamilton-co.org

Subscribers can also access these webinars from your home or office. You can see and register for upcoming webinars here.

<http://www.fastcase.com/webinars/>

If you have questions, contact Julie Koehne or Laura Dixon-Caldwell at 513.946.5300.

***Note: these are not CLE programs.**

Conference Rooms

Subscribers may reserve the library's conference rooms, located in the main room. Each room includes a table, some chairs, and a speaker phone. While they are not sound-proof, they do provide a relatively private location for meetings or quiet study. To reserve a room for an hour or two, please speak with Mary Ann at 513.946.5300.

Free CLE

Due to increased attendance, registration in advance is now required for all Law Library CLEs.

To register, call 513.946.5300 or via email masweeney@cms.hamilton-co.org

Social Networking for Litigation Research

Thursday, August 2

Noon-1pm

Susan M. Boland from the University of Cincinnati Law Library will show you how to use social networking sites for litigation research, focusing on:

- General research techniques
- Specifics on finding info on expert witnesses, opposing counsel, jurors and witnesses
- Ethical considerations when using social media for research

Approved for 1.0 hour of general CLE in Ohio, and Kentucky.

Free to subscribers; \$35 for non-subscribers.

Library Board Meeting

The next regularly scheduled meeting of the Hamilton County Law Library Resources Board will be held at 1:00 p.m. on July 12, 2012 in the Robert E. Kraft Board Room. Meetings of the board are open to the public. Minutes of past meetings are available at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>

(Continued from page 1)

of Appeals cites the following example in Appendix B of its local rules:

The excited utterance exception allows a declarant's statement to be admitted if it is made under the stress of a startling event. Officer Johnson testified that he talked to Smith 30 minutes after Smith had made a 911 call reporting that he had been assaulted. Smith told Officer Johnson, 'Bob hit me with a baseball bat.' Was Officer Johnson's testimony repeating what Smith told him admissible as an excited utterance?

So how does one balance the law, succinct facts, and the subtle art of persuasion in 75 words or less? With today's technology forcing us to tweet and text within a small number of characters, we should be conditioned to succeed at this task. As lawyers, however, we tend to expand on everything we say. Bryan Garner also provides excellent practice pointers on a writer's struggle to master framing the issue with the following:

(i) You must not try to cram everything into one sentence. Use separate sentences.

(ii) You must hold each issue to 75 or fewer words. (Otherwise, you'll lose focus and readers will lose patience.)

(iii) You must interweave facts into the issue – and keep them in chronological order.

(iv) The last sentence, which ends with a question mark, must flow directly from what precedes it. But remember that everything in the 75 word statement makes up the issue.

Bryan A. Garner, The Elements of Legal Style, 184 (2002).

The statement of the issue is your first opportunity to persuade the person deciding your case. Don't make that person work hard to understand your issue or worse yet, have to re-read it just to understand your point.

Write and re-write your issue, read it out loud, edit, revise and have a non-lawyer read it for feedback. Ask yourself:

1. Are the issues well chosen; do they raise reversible error? Are the outcomes determinative? Do they avoid deluding strong issues with weak ones?

2. Are the issues stated concretely?

3. Are the issues stated clearly? Can the court understand the issues without further reading?

4. Are the issues stated persuasively? Do the questions suggest their answers without being argumentative?

5. If changed to a declarative sentence, does each question presented make a clear, sensible holding?

Guide to Appellate Briefs,
<http://www.law.duke.edu/curriculum/appellateadvocacy/guide.html>

Like everything in life, how to frame a statement of the issue and whether to use multiple sentences and incorporating facts is a subjective writing style. It should be considered on a case-by-case basis. If the case is a simple slip and fall, a one sentence issue may be better and well received by the audience. Consider the case and who will be reviewing your brief. For complex cases, Bryan Garner and the Ninth District Court of Appeals may be correct and their writing style should at least be explored in the brief writing process. At a minimum, consider the issue with the statement of the issue when drafting an appellate brief.

*Reprinted with permission from the Reminger *Appellate Advocacy Newsletter*, Spring 2012.

For more information, contact Michelle J. Sheehan at msheehan@reminger.com

Ohio Appellate Practice Resources

Need more information on the Appeals process in Ohio? Check out this list of resources available at the Law Library.

Anderson's Appellate Practice and Procedure in Ohio
KFO555 .W65

Appellate Practice
KFO555 .A75

Appellate Practice: A View From the Bench in Ohio/
Patricia A. Blackmon
KFO555. A6

Baldwin's Ohio Appellate Practice/
Mark P. Painter and Andrew S. Polis
KFO555 .W5

Filing an Appeal in the Supreme Court of Ohio: A Pro Se Guide
KF510. F6

Practitioner's Handbook: Court of Appeals of Ohio, First Appellate District/
Cincinnati Bar Association
KFO556 .C68

Successfully Navigating the Appeals Process/
Patricia Ann Blackmon
KFO555 .A55

What Judges Want You to Know: Civil Trial & Appellate Practice in the Federal and State Courts/
Jeffrey T. Cox
KFO538 .A75 W43

Helpful Links

First District Court of Appeals-
<http://www.hamilton-co.org/appealscourt/districtCourts/>

First District Local Rules-
<http://www.hamilton-co.org/appealscourt/localrules.asp?m=RUL>

Ohio Supreme Court Listing of Appeals Courts-
<http://www.supremecourt.ohio.gov/JudSystem/districtCourts/>

Ohio Rules of Appellate Procedure-
<http://www.sconet.state.oh.us/LegalResources/Rules/appellate/AppellateProcedure.pdf>

Ohio Appeals Court Opinions-
<http://www.supremecourt.ohio.gov/ROD/docs/>



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Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Landlord Tenant Law-Eviction 101

Johanna Hutchins is our next speaker in the *You and the Legal System* Series for the public. Ms. Hutchins will address Landlord Tenant Issues-Eviction 101 on Friday, July 20, 2012 at 12:00 noon at the Law Library. The program will focus on

- Defining the Landlord/Tenant Relationship
- The eviction process from both sides
- Costs of eviction
- Alternatives to eviction

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5300.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* Series. Miriam Sheline will discuss Elder Law on August 17.



Landlord Tenant Resources

Law Library patrons have access to a variety of resources on landlord tenant law. If you have questions about access to the Law Library's online resources, just ask a librarian for guidance.

Books

American law of landlord and tenant / Robert S. Schoshinski
1 KF589 .S34

*Every landlord's legal guide / Marcia Stewart, Ralph Warner and Janet Portman
KF590.Z9 S74

*Every tenant's legal guide / Janet Portman and Marcia Stewart
KF590.Z9 P67 2009

*First-time landlord : your guide to renting out a single-family home / Janet Portman, Marcia Stewart, and Michael Molinski
HD1394.5.U6 P67

Friedman on leases / Milton R. Friedman
KF590 .F74

Landlord-tenant law from A to Z [in Ohio] / Ann K. Schooley, Amy Ashton Shaw
KFO117 .L35 2010 (CLE)

Law of Premises Liability/
Glen Weissenberger, Barbara J. Mcfarland
KF1287. P33 2011

Landlord and tenant law in a nutshell / David S. Hill, Carol Necole Brown
KF590.Z9 H45 2011

*Leases & rental agreements / Marcia Stewart & Ralph Warner & Janet Portman
KF590.Z9 S744

Baldwin's Ohio Landlord Tenant Law
KFO117 .W45

*Renters' rights : the basics /Janet Portman and Marcia Stewart
KF590.Z9 P673

Online Resources

These resources can be accessed remotely through the Law Library website.

[Aspen/Loislaw Real Estate Library](#)
Commercial Leases

EBSCO NOLO Guides

Every landlord's guide to finding great tenants

Every landlord's property protection guide

Every landlord's tax deduction guide

Secrets to a successful eviction for landlords and rental property owners

*Available online through EBSCO NOLO guide library

Helpful Links

Hamilton County Clerk of Courts-Landlord Tenant FAQs

<http://www.courtclerk.org/faq.asp?sec=lt>

Housing Opportunities Made Equal

<http://www.cincyfairhousing.com/>

Cincinnati Metropolitan Housing Authority

<http://www.cintimha.com/>

Upcoming Events

July 3: Fastcase Webinar: Legal Research for Paralegals

July 12: Law Library Board Meeting

July 20: You and the Legal System: Eviction 101

August 2: CLE: Social Networking for Litigation Research

August 8: Fastcase Webinar: Tips for Enhanced Legal Research with Fastcase

August 27: Fastcase Webinar: Keyword (Boolean Search) for Lawyers

Law Library Holidays

The Law Library will be closed on Wednesday, July 4 in honor of Independence Day.



July 2012 Law Library Newsletter

INSIDE THIS MONTH

- Appellate Briefs
- Tech Tip: Google Drive
- Free CLE
- Landlord Tenant Resources

ADDRESS CORRECTION REQUESTED

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