HOW TO WRITE A WINNING APPELLATE BRIEF

Utilize these comprehensive steps and valuable tips to write a stronger legal brief.
Petitioning the Supreme Court can be a daunting task. Careless writing, poor formatting, and ignorance of the Court’s rules can significantly decrease the odds that your petition will be selected for review. In this e-book, we’ll provide steps and suggestions to help you take control of the certiorari process. You’ll learn:

- The appropriate tone for a petition
- The importance of telling a compelling story
- How a few simple questions could mean success or failure for your appeal
- Why formatting matters
- Answers to frequently asked questions

Filing a brief fraught with errors makes it nearly impossible to win any appeal. By developing a working knowledge of the parts of a Supreme Court petition, you can increase the chances that the Court will consider your case.

**STANDARD CONTENT**

Among other parts, a Supreme Court petition must include:

- Questions Presented
- Opinions Below
- Jurisdictional Statement
- Constitutional/Statutory Provisions Involved
- Statement of the Case
- Argument
- Conclusion

*For more information, see our blog post: Legal Brief Formatting: Three Elements.*

**QUICK FACTS ON SUPREME COURT PETITIONS**

- The most common vehicle for an appeal to the Supreme Court is called a “petition for writ of certiorari”
- Proceeding as your own legal counsel is known as litigating “pro se”
- You can appeal your conviction, imprisonment, or a civil judgment below if you believe some aspect of the ruling was unlawful
- Review by the U.S. Supreme Court is not a matter of right; the Court exercises its discretion sparingly
- The Court doesn’t focus on correcting errors in lower court decisions. Instead, it focuses on larger issues that affect future litigation
First steps

Here are 10 critical steps to keep in mind while preparing a petition for the Supreme Court:

1. Do your research
   Before drafting your brief, make sure to compile all available information about your case. Take time to read other petitions, particularly those in which certiorari was granted. This [sample brief](#) from Cockle Legal Briefs is a good place to start.

2. Write clearly and persuasively
   Supreme Court petitions present a unique opportunity for appellate advocacy. Utilize active verbs and a single narrative to clearly present your case. If the Justices cannot understand what your case is about from the moment they pick up your brief, you’re fighting an uphill battle.

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**REFRESH YOUR WRITING**

Persuasive writing takes practice.
- Prepare an outline in advance
- End sentences with emphasis
- Use strong, active verbs
- Remove unnecessary words
- Know your audience
- Know the facts of the cases you cite
- Edit, and then edit again
- Remember that good writing makes the reader’s job easier
Be Persuasive and Succinct

Supreme Court Justices care about specific questions of the law and whether your case presents an opportunity to answer those questions. The most convincing Supreme Court petitions use clear, effective issue framing and focused argument to gain attention in an already overcrowded docket:

3. **Simplify**
The Court’s certiorari jurisdiction, though sweeping in scope, is exercised sparingly. Your brief’s strength will contribute to its success on appeal. Outline your argument in advance so that it is clear, easy to digest, and focuses on the key issues at hand.

4. **Be a storyteller, not a robot**
Justices are human. Give the Court a reason to create legal principles that provide victory to the side that ought to win. Take time to craft your story in a compelling way before building up to your legal argument.

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**BRIEF SAMPLE**

For a sample of effective, persuasive storytelling without unnecessary legal jargon, check out [this brief for Jefferson Wayne Schrader](#), who petitioned the Court for the opportunity to exercise his Second Amendment rights.

Schrader received a non-aggravated misdemeanor 45 years prior, and hadn't had an encounter with law enforcement since. He asked the Court whether the type of crime he committed should bar him from gun ownership.

The petition tells his story by delving into American history, including details about founding father Paul Revere, to give historical context to a modern case.
Next Steps

Once you’ve compiled all of your documents and have a general tone in place, it’s time to focus on the parts of a petition that receive the most attention:

5. Pose compelling questions
   Most Supreme Court petitions pose just one or two questions for the court to answer. It is imperative to get these questions right, because they often determine whether the Justices will review a case. Your questions should focus on issues that go beyond the scope of your case, and could affect laws and decisions already in effect (see sidebar for examples).

6. State your case
   Another important section in a petition is the “Statement of the Case.” Here, you can provide a general overview of your story. It should follow chronological order and include details that allow the reader to understand your case’s procedural and factual history.

7. State your case
   Each petition needs a “Reasons for Granting the Writ” section. This space will focus on the specific reasons that your case warrants review. Use it to explain why your case is an ideal vehicle for resolving the questions you’ve presented. Perhaps there is a split among the courts below on an issue, or a lower court has issued a decision which extends beyond the interests of the parties involved.

SAMPLE QUESTIONS

These questions were taken from recent cases in which review was granted by the Supreme Court:

• “Does an individual’s obligation to report suspected child abuse make that individual an agent of law enforcement for purposes of the Confrontation Clause?” (Ohio v. Clark)

• “Does Title II of the Americans with Disabilities Act require law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody?” (City and County of San Francisco v. Sheehan)
Finishing Up

Once you’ve got the tone in place and the key sections that you need, it’s time to put it all together:

8. Include all relevant information
Remember to append the opinions and orders entered in conjunction with the judgment sought to be reviewed. You may also include any other material that is essential to understanding your petition, like persuasive case law and trial transcript.

9. Review your draft, then review it again
Be sure to give yourself sufficient time to proofread and edit your final draft. You may also consider hiring legal proofreaders and document analysts who have extensive experience in preparing U.S. Supreme Court petitions.

10. File and serve on time
You have 90 days in which to file your petition from the date of the final judgment in the U.S. Court of Appeals or highest state appellate court. You must also serve counsel for each separately represented party in the proceeding below.

PROOFREADING POWER
Expert legal proofreading ensures that your petition is:
• Presented in a coherent and persuasive manner
• Free of spelling and grammatical errors
• Cited consistently throughout
Having a brief rejected due to formatting errors can be disheartening. Avoid that possibility by ensuring that your brief is formatted correctly the first time.

- Supreme Court briefs must be prepared using Century font. Your brief will be rejected if it is prepared using any other font – including Times New Roman.
- The text field, including footnotes, may not exceed 4-1/8 by 7-1/8 inches.
- You must block-indent any quote that is longer than 50 words. This is best practice for most legal documents, but mandatory in the Supreme Court.
- You must provide the verbatim constitutional or statutory provisions involved in the body of your petition. It is not sufficient to provide a summary of these materials.
In this e-Book, you’ve learned strategies for setting the tone in a petition, telling your story, including relevant information, and formatting with accuracy.

As you pursue your appeal, keep these strategies and tips in mind, and contact Cockle Legal Briefs today for help in filing your next appellate brief!