

Written Advocacy III: Oppositions

Advanced Legal Writing

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Outline

Written Advocacy

Writing Tips

Oppositions

Assignment

Framing the Issue

Issue framing in advocacy is about presenting the legal issue in a way that will yield the best chance of success.

1. Identify the rule
2. Identify the material facts
3. Identify the desired relief
4. Craft appropriate themes

A good opposition will frame the issue differently from a memo in support.

Framing the Background

Revisiting Loid, Anya, and Yor:

- ▶ How do we tell the story if we want to use the email in evidence?
- ▶ How do we tell the story if we want to exclude the email?

Background Timeline (in Support)

- ▶ Loid lends Anya \$50,000.00.
- ▶ Anya does not pay back the money.
- ▶ Loid's business fails.
- ▶ On January 6, Anya is typing an email to Loid.
- ▶ Someone begins pounding on Anya's door; maybe there is yelling.
- ▶ Anya perceives that Yor at the door and sends her email.
- ▶ Maybe there is continued yelling.
- ▶ There is a gunshot.
- ▶ Becky, the neighbor, sees someone walking out of Anya's home.
- ▶ Becky calls 911.

Additional Background Facts (in Support)

- ▶ Loid and Anya's relationship and methods of communication
- ▶ Anya's email writing habits

Background Facts (in Opposition)

- ▶ What facts are beyond dispute?
- ▶ Where should we focus the reader?

Using Cases to Support Your Position

- ▶ Review the case law
 - ▶ What did the proponent want?
 - ▶ Why did the proponent want it?
 - ▶ Why (factually) did the court grant the proponent's request?
- ▶ Identify your position
 - ▶ What do you want?
 - ▶ Why do you want it?
 - ▶ Why should you get it?

Avoid boilerplate language

Boilerplate

Loid, by and through counsel, respectfully submits this motion and Memorandum in support and asks the Court to enter an order consistent with the Massachusetts Guide to Evidence Section 803(2) and the precedents as outlined above to admit the Email as evidence.

No Boilerplate

For the reasons stated above, Loid respectfully asks the Court to enter an order to admit the Email as evidence.

Use advocacy-style headings

Plain headings

- ▶ I. Exciting Event
- ▶ II. Spontaneous Reaction

Advocacy headings

I. The pounding at the door, the yelling, and the gunshot constitute a sufficiently startling event.

Start with comparisons to similar cases in the “application.”

- ▶ Original Statement: $P \rightarrow Q$
 - ▶ “If P is true, then we get outcome Q”
- ▶ Inverse: $\neg P \rightarrow \neg Q$
 - ▶ “If P is not true, then we get the opposite outcome of Q.”

Even if the original statement is true, the inverse might not be. Therefore, “distinguishing” cases is important but insufficient to prove your point.

Framing the Issue

Do not simply accept the proponent's facts and law. Consider the issue independently from the proponent's perspective and organize your argument accordingly.

Highlighting the Proponent's Weaknesses

- ▶ Are there missing citations? (“Loid’s memorandum provides no legal support for its claims...”)
- ▶ Are there misstatements of fact or law?
- ▶ Does the proponent apply the correct law?
- ▶ Does the proponent ignore certain material facts?
- ▶ Are there gaps in the logic?
- ▶ Do the cases cited fail to support the proponent’s position?

Use TREAT

Highlight weaknesses and mistakes as part of your standard organization:

- ▶ If a proponent's lead case supports your argument, simply acknowledge that fact as part of the "explanation":
"*DiMonte*, which Loid cites in his memorandum, illustrates the limits of spontaneity in writing."
- ▶ If there are misstatements of fact, mention that in the "Background" and in your "application": "Here, there was no startling event. ... Contrary to what Loid's memo states, the record shows that ..."

Addressing Wild Arguments

If there is an argument that you need to make that falls outside the normal TREAT framework, you may include an additional paragraph after your TREAT that addresses it.

For example, the proponent may cite the wrong legal standard. After you use TREAT to address the correct standard, you may include a paragraph at the end to explain why the proponent's legal standard is incorrect.

Avoid attacking the attorney or party personally

- ▶ “Loid is trying to mislead the Court about *Mulgrave*. Contrary to what Loid says, *Mulgrave* actually stands for the proposition that ...”
- ▶ “Loid’s memorandum misstates the holding of *Mulgrave*. In *Mulgrave*, the Supreme Judicial Court ...”

Some Ethical Considerations

- ▶ ABA Model R. Prof. C. 3.3: Candor Toward the Tribunal
 - ▶ Do not make false statements of fact or law
 - ▶ Correct any false statements unintentionally made
 - ▶ Do not offer evidence known to be false
- ▶ ABA Model R. Prof. C. 3.4: Fairness to Opposing Party & Counsel
 - ▶ Do not falsify evidence
 - ▶ Do not argue things insupportable by the facts

Assignment:	Memorandum in Opposition
Grade:	20% of final grade
Deadline:	March 23, 2022, at 6PM
Word Limit:	1500
Special Requirements:	Track hours spent on assignment

Assignment Details

Your assignment this week is to prepare a memorandum in opposition to the memorandum you drafted in support of the motion *in limine* to admit an email into evidence. I recommend that you use the following template as a starting point: memorandum template.

All of the sources you need for the assignment are in the document library. These are the same documents for the outlining assignment and the memorandum in support, with the exception of the opposing memorandum, which I have modified to reflect the different side you will be taking for this assignment.

You should track how much time you spend on this assignment.

Grading Criteria

► Overall Appearance

- ☐ Does the memo include all necessary sections?
- ☐ Is the typing and physical presentation neat and in the necessary format?
- ☐ Does the memo comply with the mandated word-count limit?

► Introduction

- ☐ Does the introduction identify the relief requested?
- ☐ Does the introduction establish the memo's theme?

► Background

- ☐ Does the writer organize the factual narrative appropriately, such as by using an introductory paragraph?

Document Library

Memorandum