

Outside Counsel

Top 10 Tips for Effective Written Advocacy in International Arbitration

To effectively advocate in an international arbitration, lawyers must produce effective and persuasive written communications. An arbitrator's first impression of a case is based on written submissions, and when arbitrators are deciding on the outcome of a case, the written record is often more influential than the lawyers' oral arguments. While oral advocacy is a key skill for any lawyer to develop, even a brilliant oral argument can be undermined by poor written filings. To avoid squandering time in oral arguments correcting written mistakes and clarifying misinterpretations, practitioners must develop and practice good writing habits. Below are ten key tips for effective written advocacy in international arbitration.

Build A Roadmap

Whether you are drafting a letter, brief, or other submission,

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start your document by providing a roadmap that summarizes your main arguments. Your roadmap should organize and order your arguments thoughtfully, either based on their logic or in descending order of strength. Use the roadmap to express your view of how the issues fit together and which are most important.

You can also use roadmaps at the start of each argument section to organize and preview the sub-arguments to come. Use sub-headers to track arguments, and use indicators or signposts (e.g., *First, Second, Third*) at the start of paragraphs or sentences to track shorter arguments.

Examples:

- Claimant's argument fails for **four** reasons: **1)** xx; **2)** xx; **3)** xx; **4)** Each is discussed below.

- The claim should be dismissed for both substantive and procedural reasons.

Guide Your Reader with Headers

Headers create the organizational structure of any formal submission, whether a letter or a brief. Headings should correspond precisely to the roadmap you have provided at the start of the document. Make sure that the number of arguments in the body of the text matches the number and order of the arguments previewed in the roadmap. Each heading should distill the section's topic to its most concise expression.

Everything in the section should relate to the topic described in the header. In most instances, headers should be complete sentences, but in factual background sections, nouns can be effective headings as well. Draft headings that grab your readers' attention and guide them through your argument.

Examples:

Topical: The Statute of Limitations Question.

Assertive: The Statute of Limitations Bars This Claim.

Adversarial: The Statute of Limitations Bars This Claim Because It Was Filed Three Months After the Limitations Period Expired.

Assert Each Paragraph's Main Point in the Initial Sentence

The basics of paragraph structure are critical to overall document cohesion and effectiveness. That's why it's important to limit each paragraph to one point and express that point in the first sentence of the paragraph. Readers pay more attention to the initial sentence of each paragraph, so it's worth spending extra time to craft a strong topic sentence.

First sentences focus the reader and connect to what is most important in the argument, so it is critical to start the paragraph with the conclusion—in other words, the main point of the argument. If you spend the whole paragraph building up to the conclusion, you risk losing your reader's attention. Take your time drafting the first sentence, as it will guide the structure of your paragraph and the flow of your argument. If you find it difficult to summarize the theme of the paragraph in one topic sentence, it might be too complicated for your reader to follow. In that case, you should consider reorganizing your thoughts and breaking the idea into two or more paragraphs.

In the body of the paragraph, make sure that all elements of the paragraph support that overarching topic. Take advantage of the reader's attention by maximizing the efficiency of your sentence structure. One way to do this is by framing

sentences with short time descriptor clauses or transition words.

Examples:

1. **On 2 October 2018**, XYZ Company started construction.
2. **In *Smith v. Jones***, the court upheld a conviction, **even though** the police did not have a warrant.

Lastly, use the concluding sentence of the paragraph to reiterate the paragraph's main purpose in light of the exposition of the argument.

Provide a Strong Transition In Each Topic Sentence

In addition to expressing the main point of the new paragraph, each topic sentence should provide a clear transition that explains how this new point relates to the prior

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paragraph. Strong transitions ensure connectivity and cohesion. They are central to reader's ability to follow the development and flow of your argument.

You can create a strong transition in either of two ways. First, you can use an explicit transitional term, like *nevertheless*, *moreover*, or *indeed*. Use these terms precisely: ensure that the relationship between paragraphs is as clear to the reader as it is to you. Second, you can create a strong transition by simply referring to a key noun in the prior paragraph, as in the following topic sentences:

Examples:

3. Other jurisdictions have reached **this same conclusion**...
4. **This argument** also fails for procedural reasons...

Be Specific

Keep in mind that your readers—the arbitral tribunal—are international. English may not be an arbitrator's first language, and not all readers share the same legal background or training. In this light, clear writing is all the more important.

Refrain from using idioms and analogies that may not translate well. Instead of referring to local terms of domestic legal procedure, describe the act or procedure you seek to invoke.

Use party names instead of procedural positions whenever possible, and avoid lengthy or complicated acronyms.

Be sure to eliminate the use of ambiguous pronouns in your writing: make sure each pronoun refers to a specific, easily identifiable noun.

Example:

Before: Mary dropped a cup and a heavy pot on the glass table. **That** was the reason **it** broke.

After: Mary dropped a cup and a heavy pot on the glass table. The glass table broke from the weight of the heavy pot.

Eliminate Unnecessary Words

While varying sentence length in a given text makes for good writing, sentences that are too long have a tendency to confuse readers, causing them to lose interest. A sentence is

generally too long if it is more than three lines (about 25 words) or takes up the whole paragraph.

To ensure your sentences are crisp and efficient, avoid legalese when possible and eliminate unnecessary words. Some of the most common overused extra words in legal submission are adverbs (clearly, undoubtedly, obviously), qualifiers (rather, very, little, any) and redundant words or phrases (in order to à to).

Make a special effort to avoid superlatives, which invite the reader to question the accuracy of your statement and the credibility of your argument. Rather than raising suspicion by using superlatives, achieve your goals of persuasion by carefully structuring your argument and reasoning through the application of the law to the facts.

Examples:

Before: **Clearly, there is a plethora of** uncontradicted evidence to support this finding.

After: Uncontradicted evidence supports this finding.

Before: ABC **company is in the business of making** computers.

After: ABC makes computers.

Before: **Our position in regard to** the claim for damages is...

After: The claim for damages is...

Use the Active Voice

Writing in the active voice helps keep your sentences short and makes your writing powerful, more efficient, and easier to follow. In contrast, the passive voice is longer, more convoluted, and less interesting. In a

sentence using the active voice, the subject of the sentence performs the action expressed in the verb. One way to ensure you are writing in the active voice is to check that the subject and verb are as close together as possible.

Examples:

Passive: The gate **was closed by** the guard.

Active: The guard closed the gate.

Show, Don't Tell

Good writing makes the reader feel smart. Avoid directly telling your reader what to think or how to rule. Doing so would be too aggressive and may even insult the reader's intelligence. Rather, your presentation of the facts and argument should lead

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the reader to view your position and your conclusion as the most natural consequence of the sequence of the facts and the state of the law. Guiding your readers to reach your desired conclusion on their own will make that conclusion all the more persuasive, as this approach makes readers feel invested in the analytical work they did to reach that conclusion.

Be Consistent in Aesthetics and Style

Ensure that your style is consistent throughout your text and aesthetically pleasing to the reader. For example, your paragraph formatting,

indentation, and use of spacing after periods should be consistent. Use text formatting—such as bold, underline, and italics—sparingly; rather than creating emphasis through formatting, do so with strong paragraph and sentence structure.

Use block quotations to set out and emphasize key text that is longer than a few lines, but don't make the reader do the work of reader dense legal language: always introduce block quotations by previewing the key point and why it matters. Be selective in your use of quotes and block quotes by ensuring that their placement always advances and serves your analysis.

Take the Time to Edit

The precision and presentation of your text is just as important as its substantive content. Take the time to edit—and re-edit—your work. Easily catchable mistakes can undermine your argument, your client's position, and your credibility. Set aside editing time to focus not just on proofreading and sentence structure, but on overall document organization, including roadmaps and topic sentences.