

FROM THE LEGAL WRITING CLINIC
WRITING TIP OF THE WEEK

USING TOPIC OR THESIS SENTENCES IN A BRIEF



As in a legal memorandum, a topic or thesis sentence for a rule explanation in a brief signals your reader that you are introducing new material. However, unlike a topic sentence in a memo, it is not an objective statement of the rule. Use a topic sentence in a brief to state the rule in a way that subtly favors your client's position.

- To determine whether a public figure may recover damages for false statements, the court considers whether the statements were made with “actual malice.” [cite] (objective statement)
- A public figure is entitled to damages for false statements when the publisher makes the statements with “actual malice.” [cite] (favoring public figure)
- A public figure may not recover damages for a publisher's inaccurate statements unless the statements were made with “actual malice.” [cite] (favoring publisher)

In a brief, a topic sentence for a rule explanation section should be a favorable statement of the legal rule gleaned from a case or group of cases. The topic sentence sets the tone for the favorable facts and rationale that follow. Although you must address negative facts and rationale, you will give the most attention to those that favor your position.

When the result of a case is favorable to your client, state the rule broadly. When the result is unfavorable, frame the rule as narrowly as possible. If part of the rule is favorable, try to emphasize the favorable part and de-emphasize the unfavorable part.

Robin Wellford Slocum, Legal Reasoning, Writing, and Persuasive Argument 339-48, 367-75 (2d ed. 2006); see also Anne Enquist & Laurel Currie Oates, Just Writing 42-45 (4th ed. 2013); Laurel Currie Oates & Anne Enquist, The Legal Writing Handbook 173-75, 487-91 (5th ed. 2010).