

FROM MODULE PROPERTIES

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Cell Phone Policy

The cellular phone policy applies to any device that makes or receives phone calls, leaves messages, sends text messages, surfs the Internet, or downloads and allows for the reading of and responding to email whether the device is company-supplied or personally owned.

Cell Phones or Similar Devices at Work

([cp:scripting key='AudienceInfo' attributesystemname='Name' /]) is aware that employees utilize their personal or company-supplied cellular phones for business purposes. At the same time, cell phones are a distraction in the workplace. To ensure the effectiveness of instruction/hands-on activities, in addition to safety of all employees; all employees are asked to leave cell phones at their desk or out of the working/learning environment. Nevertheless, on the unusual occasion of an emergency or anticipated emergency that requires immediate attention, please inform your supervisor and ask for guidance.

Employees who violate this policy will be subject to disciplinary actions, up to and including **employment termination**.

Legal Brief

Sample Brief—Marbury v. Madison, 5 U.S. 137, 1 Cranch 137 (1803)

FACTS: William Marbury was one of President Adams' "midnight appointments." All of the necessary paperwork and procedures were completed to secure his appointment as a justice of the peace for Washington, D.C., but Secretary of State John Marshall – himself a midnight appointee to a somewhat more exalted judicial position – failed to deliver his commission. Upon assuming the presidency, Jefferson ordered his Secretary of State – James Madison – not to deliver the commission. Under authority of the Judiciary Act of 1789, Marbury sued to ask the Supreme Court to issue a writ of mandamus to force Madison to deliver the commission.

ISSUES: 1) Does Marbury have a right to this commission? 2) If he has a right, is there a remedy at law to realize it? 3) If there is a remedy, is it one that can issue from the Supreme Court?

HELD: 1) Yes. 2) Yes. 3) No.

REASONING (Marshall for a 6-0 Court):

To 1. Because Marbury's commission was signed by the President and sealed by the Secretary of State, he has a legal right to the commission.

To 2. Because the signing and sealing completed the appointment process, denial of the commission is a violation of the law. In a government of laws, a violation of the law creates a governmental responsibility to remedy the violation. A writ of mandamus is such a remedy.

To 3. The Constitution is the "supreme law of the land" (Art. VI). As such, it is "superior" and "fundamental and paramount." It establishes "certain limits" on the power of the government it creates. This includes the Congress. Without such limits, "it would be giving to the legislature a practical and real omnipotence." Thus, "a legislative act contrary to the Constitution is not law."

"It is emphatically the province and duty of the judicial department to say what the law is." When a case comes to the Supreme Court, the Court must decide that case according to the law. If "ordinary" (statutory) legislation conflicts with the limits imposed on government by the Constitution, the fundamental law must govern the ordinary. If the legislature passed an act that the Constitution forbids – like a tax on interstate sales, an *ex post facto* law, or a treason conviction based on something other than two witnesses or a confession in court – the courts would have to strike it down. Otherwise, the Constitution would not limit government. Courts have this power because they decide cases under law; judges take an oath to uphold the Constitution, and this is part of that function.

Following these principles, Marbury cannot receive a mandamus from the Court. The Constitution creates two categories of jurisdiction for the Supreme Court – original and appellate. Congress, under Article III, has the power to regulate appellate jurisdiction; no such power, however, is given for the regulation of original jurisdiction. The latter is completely and exclusively defined by Article III – it cannot be added to or taken away from. The provision of the Judiciary Act of 1789 which *added* matters of mandamus to the original jurisdiction of the Court, therefore, is beyond the power given to Congress by the people in the Constitution. Having no legitimate jurisdiction over this matter, the Court cannot provide Marbury with the remedy he seeks.

DECISION: Dismiss for want of jurisdiction.

DISSENTS: None

SIGNIFICANCE: Marshall, relying heavily on "logical reasoning" and little constitutional text, read the power of judicial review over acts of the national government into American constitutional law. This power was extended over the actions of state governments in *Martin v. Hunter's Lessee* (1816) and state courts in *Cohens v. Virginia* (1819), and is 1) the source of most of the authority the Court has come to know, and 2) the focal point of the ultimate debate about the Court's proper constitutional role: should it exercise this power frequently (activism) or sparingly (restraints).

Safety Checklist

INSPECTION ITEM	Yes	No	N/A	Comments/Corrections
GENERAL				
Job safety and health poster, and communications and emergency numbers posted				
Records of recent inspections and safety meetings available				
Adequate provisions for first aid and/or medical attention				
HOUSEKEEPING AND FACILITIES				
Are stairways, aisles and access ways kept clear?				
Are trash containers provided and emptied on a regular basis?				
Are materials stored properly?				
Are spills cleaned up immediately?				
Are walkways to the facility clear of ice and snow and illuminated?				
Are the gutters/downspouts adequate to draw water/ice away from walkways?				
Are open-sided edges longer than 4 feet protected by guardrails or covers?				
PERSONAL PROTECTIVE EQUIPMENT				
Eye protection is being used and adequate				
Head protection is utilized as needed				
Respirators are used when needed and stored correctly at other times				
Gloves are being used when needed				
Proper clothing is being worn, including foot protection				
Hearing protection is available and used				
CHEMICAL HAZARD COMMUNICATON				
Does the facility have a hazard communication program?				
Does the facility have a complete list of MSDS sheets available?				
Are chemicals properly labeled and do they have appropriate warning labels?				
Have employees received hazard communication training?				
HAND AND POWER TOOLS				
Are proper tools being used for the job?				
Are tools being maintained in a safe condition?				
Are mechanical guards in place?				
Is proper training provided for users of the tool(s)?				
ELECTRICAL				
Are electrical panels/circuits labeled and free of storage in front of panels?				
Are electrical extension cords in good repair, grounded and not used as permanent wiring?				
Are energized electrical parts protected from contact with other hazards?				
Are outdoor receptacles GFCI protected and receptacles within 6 feet of water GFCI protected?				
MATERIAL HANDLING				
Have all chains and/or slings been inspected for defects, and labeled or taken out of service if inadequate?				
Have all forklifts been inspected before use?				
FIRE PROTECTION				
Are flammable/combustible liquids stored in approved storage cabinets?				
Have the facility sprinkler/ fire alarm systems been inspected within the past 12 months?				
Do sprinklers have 18 inches of vertical clearance from stored materials?				
Are building evacuation maps posted?				
Are fire extinguishers and emergency lighting fixtures properly placed?				
Are doors/ passages unobstructed?				

Other comments or recommendations:



Public Non-Discrimination Notice

Simulated Workplace programs must provide information to applicants, participants, beneficiaries, and other interested parties regarding the rights of individuals. Methods of providing this information include publication in handbooks, manuals, pamphlets, application materials, posters, etc.

Simulated Workplace site's Public Non-discrimination Notice should be found on a variety of publications including brochures, applications, catalogs, handbooks, job announcements, posters, recruiting materials, websites, school newspapers, etc.

It also is required that a nondiscrimination notice be placed in local newspapers prior to the start of school. It counts if the county includes a statement in a general supplement, etc. (e.g., Kanawha Co. often has a back-to-school newspaper supplement that covers the upcoming school year). However, the CTE program is responsible for the following equity requirement: "Prior to the beginning of each school year, recipients must advise students, parents, employees and general public that all career and technical educational opportunities will be offered regardless of race, color, national origin, sex or disability." This must be issued annually in not only local newspapers but also institution newspapers and other publications. The annual notice must include a brief description of program offerings and admission criteria. Also a plan must be in place for disseminating the notice in any language other than English and to persons with visual impairments.

Programs should establish reasonable codes of conduct (*refer to WVBE Policy 4373*) that prohibit disruptive or inappropriate behaviors and may apply these uniformly to all students (even when the effect is to disqualify a person with a disability).

Identify the office and specific individual position/ title – with telephone number and email address, as appropriate – that should be contacted for interpretations, resolution of problems, and special situations

Released

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Confidentiality

CLIENT agrees to keep confidential and not to disclose to third parties any information provided by COMPANY pursuant to or learned by CLIENT during the course of this Agreement unless CLIENT has received the prior written consent of COMPANY to make such disclosure. This provision shall survive expiration and termination of this Agreement. This obligation of confidentiality does not extend to any information that: 1) Was in the possession of CLIENT at the time of disclosure by COMPANY, directly or indirectly; 2) Is or shall become, through no fault of CLIENT, available to the general public; or 3) Is independently developed and hereafter supplied to CLIENT by a third party without restriction or disclosure.

Introduction

I. INTRODUCTION

The ability to write a clear and persuasive brief is one of the most important weapons in a lawyer's armory; this is especially true for appellate practitioners. Although oral advocacy skills are important, a litigant's briefs are reviewed long before oral argument, when judicial law clerks are drafting their bench memoranda and judges are deciding how to approach oral argument and decide a case. Briefs are often reviewed a second (or third, fourth, or fifth) time after oral argument-when judges and their clerks are crafting the court's decision and revisiting the issues that the court must decide. For these reasons, a clear and persuasive brief often has a greater impact than even the most inspired oral argument. Moreover, it is becoming increasingly common for courts to decide cases without oral argument. In those instances, a compelling brief is critical to a litigant's success, and the only way to make an impact on the court.

The ability to write and recognize a persuasive brief is important to lawyers throughout their careers. Junior attorneys are often responsible for initially writing a brief. Senior attorneys often review those briefs *418 and either rewrite or edit them (as circumstances require). In-house counsel may then review the briefs once more, providing additional edits and comments and addressing concerns. Wherever you happen to be in your career, it is important to know how to write, rewrite, edit, recognize, and review an effective brief. This Article offers a number of guidelines for crafting such briefs and provides a number of practical pointers to help lawyers along the way from writing through final review.

More specifically, this Article offers seven general guidelines for writing persuasive briefs. Those guidelines, each of which is discussed in Part II, are as follows: (1) begin your brief with a compelling recitation of the relevant facts; (2) acknowledge the applicable legal standard and use it to your benefit; (3) carefully pick your strongest arguments; (4) present your arguments logically; (5) present your arguments simply and concisely; (6) be accurate, fair, and even-handed; and (7) follow the court's rules and sweat the details. Finally, although the discussion of these guidelines is focused primarily on appellate briefs, it is important to note that almost everything we write here applies equally to trial court briefing. After all, a good brief is a good brief.

Invalid Provisions

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This Agreement will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

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Termination Letter

Dear

Further to our meeting of (date) I (regretfully) confirm that your employment with us is terminated with effect from (date)/with immediate effect.

As stated at our meeting the reason(s) for terminating your employment with us is/are as follows:

- (Employer must clearly state reasons - transgressions and relevant policies if applicable)
- (Employer must clearly state previous warnings, informal, formal, written etc., and circumstances and person's response and subsequent behaviour/performance for each warning.)

(Clearly state requirements regarding return of documentation, equipment, car, submission of final expenses claims, and any other leaving administration issues.)

(Clearly state actual leaving date, requirement or otherwise to serve period of notice, holiday pay, and other pay and pension details.)

(Clearly state the position regarding the employee's right of appeal, and state the appeal process and timescales.)

(Optional sign-off, for example: Thank you for your past efforts and all the best for your future endeavours.)

Yours, etc.

name and position

(Optionally and recommended: attach, at the foot of the letter refer to, **a copy of your written disciplinary process**, and also attach and refer to **copies of written/printed evidence gathered during the employee's case**. This enables employees to understand clearly the case against them, and also the process and their rights during the disciplinary process, which are central to the principles of the employment dispute regulations.)

(Optional section at foot of letter, requiring person to sign, confirming receipt of the letter and any attachment(s), by way of returning a signed copy of this letter.)

Harassment

Harassment of any kind will not be tolerated on this project or on the COMPANY campus. Contractors and their employees are expected to comply with the COMPANY policy prohibiting harassment and intimidation:

"The COMPANY prohibits sexual or any other kind of harassment or intimidation, whether committed by or against a student, faculty member, supervisor, co-worker, vendor or visitor. Harassment has no place in our community, whether based on a person's race, sex, color, creed, religion, national/ethnic origin, age, handicap, sexual orientation or disabled veteran/Vietnam-era veteran status."

Contractors and their employees shall also comply with the COMPANY's Sexual Harassment policy which prohibits sexual harassment. A copy of the policy is available from Facilities Management [Comment: Name appropriate for your school] or on the web at: [Comment: Set link for your school]

Inappropriate actions or noises either on the construction site or in the surrounding area may be viewed as harassing behavior. Contractors shall instruct their employees to limit their contact with COMPANY personnel staff or students to professionally necessary interactions. Any occurrence of harassment will be cause for immediate termination and possibly removal of subcontractor from the site. The Contractor will strictly enforce these anti-harassment policies.



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Indemnification

To the fullest extent permitted by Law, the (named party) will defend, indemnify and hold harmless [Institution], including its current and former trustees, officers, directors, employees, volunteer workers, agents, assigns and students from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of, or from the performance of its operations or services and for the acts or omissions of its directors, officers, employees, contractors or subcontractors, volunteers, participants, guests or any third party for whom it is responsible, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist in the absence of this agreement.

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