

Drafting Issue Statements

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First impressions matter. And when it comes to appellate briefs, the issue statement is that first impression. Because of that, I put tremendous effort into crafting precise and clear issue statements. My goal is to orient the Court to the critical facts, highlight the relevant law, and lightly suggest the correct answer—an answer that also happens to resolve the case in my client’s favor.

Given its importance, the issue statement is the first section of the brief that I write. Doing so often takes quite a bit of time (and many revisions) to get right.

My first task when drafting an issue statement is to sift through the record and the law to find only the most important and case-dispositive issues. Everything else is just a distraction—to me and to the Court. I try to never have more than three such issues. Any more than that, and the brief can get unwieldy. But more importantly, raising too many issues may cause the Court to view the brief with skepticism, thinking it unlikely that the district court could have gotten so many things wrong. Credibility may be lost. And the weaker issues may actually devalue the winning ones.

Once I have decided on the issues to raise, the next step is drafting them. I follow Bryan Garner’s Deep Issue approach: One sentence crystalizing the case-dispositive law; one sentence laying out the most pertinent facts; then a question stating the issue. If done correctly, the law sentence (major premise) and the fact sentence (minor premise) should suggest the right answer to the ultimate question.

The three sentences should never total more than 75 words. And the shorter each sentence, the better. It is no easy task trying to distill a case down to 75 words or less, but in my experience, it is well worth the effort. For one thing, the process gives me clarity and focus on the brief’s direction. For another, it explains the case to the Court and how it should be decided in three short, clear, and precise sentences. When your job is to read briefs all day long, brevity is always appreciated. This is true for the issue statement, itself, as well as the brief as a whole.