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Writing Bad Briefs: How to Lose a Case in 100 Pages or More

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Tax Law:The 2011 Offshore Voluntary Disclosure Initiative

By Eric L. Morgenthal

As you read this article, someone, somewhere in the world, is gathering strength. Hoping and working toward someday coming to America to seek out a better life. As the expression goes, these people have taken their first steps down the road of their future "armed with nothing but their own vision." They pray that with years of hard work and perseverance, they too can obtain success and prosperity. Oftentimes, their motivation is to transfer money back home to their families in the old country. But today this Ellis Island narrative plays out far differently than it did in generations past. Now, with the Patriot Act and the Financial Crimes Enforcement Network (FinCEN), the U.S. government wants to know about these transfers.


Eric L. Morgenthal

I would like to describe the Federal Foreign Bank Account Reporting ("FBAR") Voluntary Disclosure program as a pathway back for tax evading criminals and financiers who intended to circumvent the U.S. tax system. And it is for many clients. But based upon significant experience in this area of International Tax practice, it hasn't always been the case. Often, I have heard from Holocaust survivors, refugees and immigrants from impoverished parts of the globe who are first learning about the compliance and financial reporting burdens that come when combining U.S. residency with money. (Note: the standard for compliance is U.S. residency, not U.S. citizenship.)

Due to their success in receiving 15,000 applications under the 2009 enforcement initiative ("OVDP"), the Federal Government has recently unveiled Round II: *The 2011 Offshore Voluntary Disclosure Initiative ("OVDI")*. And if anything, it proves Will Rogers was wrong. Sometimes you do get a second chance to make a first impression. Under the program, U.S. "persons"[1] making a "voluntary disclosure" can again avoid criminal liability by declaring their offshore bank accounts and reporting certain foreign transactions. And of course, it wouldn't feel like an FBAR disclosure program without a whole new list of IRS FAQ's to follow. But like before, not all nuances about the application of tax law set forth in the Code and Regulations are addressed in the IRS list of FAQ's about the OVDI.

The origins of the FBAR filing requirements are rooted in the Bank Secrecy Act of 40 years ago but were not heavily enforced. In 2003, the IRS was provided authority by FinCEN to police these provisions. In 2004, Congress assisted the IRS by raising the ante for those who failed to comply with the FBAR compliance provisions. And failure carried some severe penalties, raising the potential liability to the greater of $100,000 or 50 percent of the account balance per offense, as well as potential criminal exposure. In fact, even tax return preparers can now

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Bridging The Gap


Photo by Arthur Schulman

A. Craig Purcell, Wende Doniger, and James Fagan explain the basics of civil practice at the Academy's recent CLE weekend for new lawyers. More photos on page 16.

INSIDE...
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PRESIDENT'S MESSAGE

These Times They Are a Changin'


Sheryl L. Randazzo

By Sheryl L. Randazzo

It's a good thing that the weather is finally starting to get nicer. Winter has been getting to us all and the cold and gloomy environment makes otherwise challenging events and changing circumstances even more unsettling. And this spring, challenges and changes do abound...

Personal injury attorneys, both plaintiff's and defense, as well as the public at large, are on the cusp of being dramatically impacted by the most recent incantation of tort reform. Through a recent Task Force initiated by Governor Cuomo, otherwise titled the Medicaid Redesign Team, a proposal is before the New York State Legislature to create a Neurologically Impaired Infant Medical Indemnity Fund and to institute a cap on non-economic damages for medical malpractice awards. Former SCBA President Craig Purcell, on behalf of the SCBA and in his role as a Co-Chair of the NYSBA's Committee on the Tort System, is leading the charge to oppose the proposal. (See article on page 5, "Governor's Proposed Cap to Medical Malpractice Awards Opposed," as well as Mr. Purcell's front page article from last month's *Suffolk Lawyer*, "NYSBA Committee on the Tort System Meets, Plans Opposition to Tort Reform Proposal.") Clearly, the public's rights are under attack and as members of the legal profession we need to respond immediately.

Fiscal constraints on the judiciary have also hit especially close to home. Based upon recent budget cuts, all pro bono grant funding through New York State has been eliminated. Bringing that into SCBA terms, the position of our highly respected and extremely capable Pro Bono Coordinator Linda Novick will lack funds completely effective March 31. This is a tremendous blow to pro bono efforts countywide, and it will drastically impact recruitment of new

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FOCUS ON
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SPECIAL EDITION

BAR EVENTS

Membership Appreciation Rescheduled
Tuesday, April 5, 6 p.m.
Bar Center.
Author and motivational speaker Jon Gordon

Healthy Life Series – Massage as a Way to Improve Your Life
Thursday, April 7, 4 to 6 p.m.
Bar Center

SCBA Supreme Court Retiring Supreme Court Justice Robert W. Doyle Honored
Tuesday, April 12, 6 p.m.
Watermill Restaurant, Smithtown
Contact Marion for further information

Annual Meeting
Monday, May 2, 6 p.m.
Bar Center

Writing Bad Briefs: How to Lose a Case in 100 Pages or More

REPRINTED FROM THE NEW YORK STATE BAR JOURNAL ("THE LEGAL WRITER")

By Gerald Lebovits

Writing a really bad brief — a brief so bad you're sure to lose your case — is a skill few attorneys acquire. Only a select few can do that more than once or twice in a lifetime.

You might wonder why you'd ever want to lose a case. Perhaps you hate your client. Let's face it: Some clients are scam artists, especially those who don't pay you. Perhaps you hate your client's case. On an ethical level, the world will be better off, frankly, if some of your clients lose. Or perhaps you like your client, but you realize that your client will lose sooner or later. You might want to throw your client's case before your legal fees grow too high. Or perhaps you're in league with your adversary. The job market is tough, after all; maybe you're trying to get a job at your adversary's law firm. Or perhaps you want to ingratiate yourself with a judge who'll probably rule against your client anyway. Lawyers need to think about their next case, don't they? Or perhaps you've learned that your client has shallow pockets, and you need to cut your losses and move on before your firm downsizes you. That can happen a lot these days.

> **"The longer your brief, the less the judge will understand your case. If you choose to be deferential, make it sound phony: Use "respectfully" a lot. Obfuscate with jargon."**

The reasons you might want to lose are many, and writing a bad brief is a key to losing. For those lawyers who want to lose — and lose big — this column's for you.[1]

Rule #1: Ugly's in the Eye of the Beholder.

Stimulate readers visually. Make sure you have a bad cover. Because first impressions count when it comes to briefs, judges will notice a bad cover. They'll assume that if you don't care about presentation, you probably won't care about getting the law right. Include a border, preferably with a seasonal motif. Flowers and snowflakes add a great touch. If the court has specific requirements about how the cover should look, ignore those rules. Judges have little sense of style anyway.

Then reverse the caption. If, at the trial level, the People of the State of New York had prosecuted the defendant, make it look on appeal as if the defendant-appellant is suing the People. If you include a caption, use a typeface like Old English Text or any other font that looks like hieroglyphics. Omit your firm's name and your name if you want to disassociate yourself from your loser client.

It'll be easier for your client to go down in defeat if you leave little white space on a page. The white space is the space in the margins and between words, sentences, and paragraphs. The more words you put on a page, the greater your chances of losing. Judges will know right away that they're reading a losing brief. No need for margins. Margins were created for legal-writing teachers to critique your work in law school. Judges, too, need margins because their eyesight has dimmed over the years, so don't give them any. Your goal is to make sure the judge won't read your brief.

The more typefaces in your brief, the more you'll distract the judge from finding any good arguments your client might have. You're closer to losing than you think if your brief looks like a ransom note. Challenge yourself to write each paragraph in a different typeface. If you really want to signal that you and your brief are losers, write each sentence in a different typeface: one in Times New Roman, another in Courier, and a third in Garamond. When neon lights fail, bold, underline, and italicize, preferably all at once, and all in quotation marks. How else are you going to emphasize your lack of forthcoming content, show sarcasm, and prove your paranoia? Then uppercase as many words as you can. Capitalizing excessively makes your writing memorable, albeit unreadable.

Black ink signals professionalism. Don't use it, unless you want to win. Make your brief ugly by using baby pink or sky blue ink. The judge will notice the cute feminine or masculine charm.

If you want to irritate a judge, don't include page numbers at the bottom of each page. Judges should know how to count.

Include lots of footnotes, all in a small typeface. That'll cause the judge to dwell on the irrelevant red herrings in your case. Burying substantive arguments in footnotes is how you'll get judges and their law clerks to make law, even if the law they'll make favors your adversary. Great law started in the footnotes. Ask any Supreme Court clerk.

To lose, don't bind your brief. If you must bind it, use a rubber band or string. That'll help the judges lose some or all the pages. Or bind the brief with a metal clip with razor-sharp edges. You spilled blood writing the brief. Why shouldn't the judge and law clerk? They'll reward your thoughtlessness when they write their decision. If you decide to bind your brief, make sure the binding prevents the judge from reading the brief. Every time the judge turns the page, the brief should snap shut. When submitting the brief, include a paperweight to hold the brief open. The judge might think it's an exhibit.

Non-gender-neutral writing is like a bump on the road that focuses travelers on the trip rather than the destination. Make the judge dwell not on your content but on why you used "he" or "she." If you're not sure whether to use "she," "he," or "it," use all three, like so: "s/he/it." There's nothing like a few "s/he/its" to make your brief look exactly like that.

Boilerplate doesn't work, and that's why you should use it. Your brief should look like a cut-and-paste job. Reuse large portions of your brief from another brief you've written. Another tactic is to regurgitate a brief an intern wrote 10 years ago, and neither update nor check the old citations. Go green: Recycle your arguments. Diligent judges know that clients and cases are unique. You need to disabuse them of the notion that your client's case is unique.

Get an intern to photocopy your brief. Make sure the text on the photocopies is crooked and distorted. Have the intern photocopy half of each page. You'll leave the judge wondering what's missing.

Rule #2: Maintain Order With Disorder.

Winners pick and choose their issues and arrange them in order of strength. Loser wannabes include as many issues as they can think of and arrange them in alphabetical order. Like a law school exam, a brief is all about issue spotting, no? Besides, if you don't include all the atmospherics, you won't preserve issues for your appeal. Having many issues means you've thought about your case in depth. Put substantive issues first. Leave dispositive issues for the end. Save jurisdictional issues for the last page. Doing so will catch the judge's attention. Not.

Don't organize your arguments. Let the judge figure out what's important. That's not your job. If you're dealing with a conscientious judge, raise facts and issues not in the record.

When it comes to standards of review, who needs standards? Don't tell the judge what standard to use. Judges know what standards apply. If they don't, so much the better. If someone at your firm forces you to discuss legal standards, mix them up. Judges appreciate an enlightened discussion about why they have the discretion in the interests of justice to disregard a constitutional statute whose plain language is not subject to reasonable debate.

A brief is mystery writing in disguise. Leave the main point for the last line of the last page. You want to stun the judge.

Divert the judge's attention from real arguments and focus instead on bogus ones. Instead of making legal arguments, make only policy arguments, regardless of any binding authority that rejects the policy you suggest. Or avoid policy arguments altogether. Policy is for politicians.

Include at least one argument that doesn't pass the laugh test. It's helpful if the argument is outrageous. Putting a smile on the judge's face: Priceless.

Judges need much structure. That's why your brief shouldn't have any. Don't include headings or subheadings. No need to tell the court in what direction you're headed. Forget IRAC or any other organizational tool you've learned. Your law professors made you learn that stuff to make their job easier when they graded exams — and to help you win cases. If losing is your goal, forget what the experts told you.

Never weave a theme or theory of the case into the brief. Themes and theories tell the judge what your case stands for — something about which your judge should remain clueless. A confused judge means a happy client. And happy clients want you to write about why your adversary is a jerk, not about pretentious and arcane themes and theories.

Invert the parties' names. Write "appellee" when you mean to write "appellant." Never use your client's name or your adversary's name. But if you must, use acronyms. If your client's name is "Olivia Knight," use "OK" throughout your brief. If the appellant's name is "Bob Smith," write "BS."

Because good writing is planned, formal speech, avoid outlining and editing, and use contractions and abbreviations.

Include many facts. Leave nothing out. Be sure to mention a witness's eye color, social security number, and family history. Including every irrelevant fact, person, place, and date will guarantee that the court won't know whether the case involves a tort, a contract, or a constitutional wrong. Arrange the facts in reverse chronological order. Don't even think about techniques of storytelling, making your client come alive, and offering a succinct, concise procedural history from your client's perspective.

Misstate the law. Make it up if the court's holding favors your client. Logic tells you that the law can be so wrong. Don't explain how the law applies to your client's facts. The law is what it is. You can't change anything about it. Avoid common sense. If you pretend that you want to win and you decide to integrate law and fact, start the sentence as follows, "In my humble opinion . . . ." Every judge will know that true enlightenment will come at the end of the sentence. That's why you're guaranteed to lose in the end.

When you've lost all hope, and things seem to be going your way despite all your efforts, or lack thereof, throw all the pages to the brief down a flight of stairs, collect them, and submit them in the order the pages fell on the floor. Every case is a puzzle waiting to be solved.

Rule #3: Quote Other Judges and Lawyers Because Your Ideas Don't Matter.

No one wants to hear what you have to say. Someone smart said it before. Just repeat it. Using lots of long quotations means you didn't do independent research and analysis. Make your lack of effort obvious. Block quotations are essential in a loser brief. They waste tons of space. And no one reads them. The less the judge reads, the likelier you'll lose. When you quote, misquote. How else will you know whether the judge read your brief? Make sure you quote dicta, not holdings. Also, quote language that sounds good, even if the case goes against your client's position — and even if the case facts are different from your case. If you've read it before, it must be true. Don't bother checking other authorities. Quote all the language from the source. Include everything. Regurgitate the holdings of the case, paragraph by paragraph. Take the holdings from the headnotes. Better yet, quote from the headnotes.

Rule #4: Citations Are for the Lame and the Weak.

Miscite your authorities. Get the volume of the reporter right, but forget page numbers. Close enough is good enough, unless

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Don't Miss Judge Lebovits's CLE, "Persuasive Writing for Litigators"

The Honorable Gerald Lebovits will share the secrets of good writing at an Academy seminar scheduled for the evening of March 31. Topics include legal writing do's and don'ts; organizing a draft; making writing powerful and precise; the art of storytelling, and giving readers what they need and want.

The program runs from 6:00 to 9:00 p.m., with sign-in and light supper from 5:30. The presentation also will be available as a real-time webcast and, after, as a CD or DVD recording and an on-line video replay.

Underwriting for this program has been generously supplied by Echo Appellate Press, Inc. (President Stu Davis).

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your goal is to lose by winning. If a decision is longer than one page, never give the pinpoint citation. Your goal is to make it so difficult for the judge to find any morsel of accuracy that the judge will turn to your adversary's brief.

String cite whenever possible. If you have 20 cases for the same proposition, add them all. To show that you're smarter than the judge — a losing and therefore effective strategy — cite after every proposition in your brief, even for obvious statements. But don't cite the record below. Pointless.

Nor should you cite much legal authority. Judges are busy skeptics. It's fun to make them and their law clerks research from scratch. If they don't, and they probably won't, you're half-way to your losing goal line.

Never write the name of the case correctly. Pick one party and leave the other one out of the citation. Annoying the court will help you lose.

Don't cite the official reporters. Make the judge and law clerk find the correct citation. You just know they won't.

If you cite, don't explain why your citations are relevant. Mention that the cases are on point, but don't say why. If you try to explain the case, make the case more complicated than it is. If you want to be analytical and fancy, start every paragraph with "My adversary's argument is mendacious and ridiculous." And never use parenthetical explanations after citations. Parentheticals just throw judges a curve.

Don't cite binding cases from your jurisdiction. Cite oral decisions. Cite and quote only from dissenting and concurring opinions. Don't cite constitutions, statutes, or other laws.

Never attach the hard-to-find cases or the law you've cited.

Rule #5: Being a Lawyer Means Knowing How to Break the Rules.

The more rules you break, the greater your chances of losing. If the judge presiding over your case limits your brief to 15 pages, ignore the page limit. Rules are made to be broken. The judge obviously doesn't know that more is better. Exceed the limit. Make it 25, 50, 100, or more pages. The longer your brief, the less the judge will understand your case. Hauling heavy briefs will give the judge the excuse not to read your brief. Besides, most judges can't concentrate for more than 10 minutes at a stretch. And judges will usually fall asleep — they call it "deliberating" — by the mid-afternoon from all the hard work they've done digesting their two-hour lunches. The longer and more boring the brief, the faster you'll get the judge to deliberate over your brief.

If you're a stickler for the rules, condense your 100-page brief to fit a 15-page limit. It doesn't matter whether the text is too small to read. It'll give the judge an opportunity to take out a magnifying glass and see your case for what it really is: a loser.

Deadlines are for deadbeats. The more important it is to the court or your adversary for you to file a brief on time, the more you should be late. That's why, when you get a project, you shouldn't start early.

Don't include a table of contents or a table of authorities. Including either one of them, or including both of them, means you're a showoff.

Rule #6: Make It Personal.

If you've tried all the above rules, and you still haven't lost, go for the jugular. Attack the court, opposing counsel, and your adversary with insults, condescending language, snide remarks, irony, and humor. Destroy them: Denigrate their intelligence, motives, and integrity. Tell them how you really feel. Assail the court's earlier decisions. Pour it on like salt on a wound. Critique your adversary's writing skills. It's obvious you went to the better law school. Don't be deferential to the court. We all know that the judge isn't the sharpest tool in the shed, just the more politically connected. If you choose to be deferential, make it sound phony: Use "respectfully" a lot. If you do that, the court might not sanction you for frivolous litigation.

Losing briefs are those that demonstrate how the court is conspiring with your adversary against your client and you personally. Use the phrase "in cahoots" often.

Tell the court that your adversary is a "liar" who likes to tell "fanciful fairytales." From then on, call your adversary "My opponent's 'esteemed' attorney." If your adversary responds in kind, keep fighting back. Hit below the belt. Judges love it when both parties take off the gloves. You'll entertain your judge, who'll place bets with court personnel on which lawyer will end up the bigger loser.

Rule #7: Bury the Bad Stuff.

Losers concede nothing. Fight to the end, especially on the little things that don't matter. How else will the judge know that you're passionate about the case?

Include only the facts favorable to your client. Hide unfavorable facts. A judge who thinks you're sleazy will reward you with the loss you seek.

Bury the bad cases — the ones that go against your client's position. If you've found a case that goes against your argument, don't mention it. Let your adversary find it. No point in talking about one meaningless case when you have 20 other cases on your side. Let the law clerks do some research. They get paid to do your research. And they get unlimited access to Westlaw and LEXIS. You don't. Count yourself fortunate if you never get a chance to address unfavorable cases later.

Don't cite the record. The past is the past.

Rule #8: You're a Lawyer, Not an Editor.

Lawyers don't have time to spellcheck, proofread, or cite check. Time is money for lawyers. But for judges, seeing typos in a brief is like having a cellular phone go off in a quiet courtroom to the doleful Ramones' "I Wanna be Sedated" ballad. Don't sweat the details. It's the big stuff that counts in a brief. Use typos to signal that you're a busy and successful lawyer — albeit a loser — with a great practice.

Repeat your arguments every chance you get. That will guarantee that the judge won't care even if you're right on the law. Belabor the obvious.

No need for clarity or brevity: Hapless virtues.

Don't begin paragraphs with topic sentences or draft transitions to connect paragraphs.

Punctuation is important, but not in a losing brief. You've never learned the difference between a comma, period, semicolon, and colon. No reason to start now. To make your brief stand out, challenge yourself to write a sentence that covers an entire paragraph. Stream of consciousness means you've thought about the case.

Handwritten edits will do. Put arrows and stars for the judge to follow your argument. You want your work to stand out; show the judge that you didn't put the effort to proofread. If you want to look like you care, handwrite the page numbers in black ink in the bottom left-hand corner, right near the brief's binding. Finding the page numbers is half the fun in reading a brief.

Misspell your client's name. Misspell the judge's name. If you can't remember the judge's name, call the judge "Mr.," especially if the judge is a woman.

Rule #9: Be Superficial: It's Not the Substance That Counts.

Write emotionally: Show the judge what matters. Because understatement is persuasive, be sure to exaggerate. Details are what convince, so be conclusory.

Don't tell the court what relief you seek. If by some mishap you win, you'll at least get the relief you neither need nor want.

In a losing brief, the question presented should be several paragraphs long. You've got lots of questions, and judges always think they have lots of answers. Write the question in a way that the judge will respond with a definite "maybe."

In your facts section, include facts that aren't in your argument section. Include facts that aren't in the record. If you must cite the record, direct the judge to the wrong page. A quicker way to lose: Don't cite facts at all. Argue law but never fact. Don't explain how the case reached the appellate court. Don't explain what happened at trial.

In your summary of the argument, write only one or two sentences detailing what your case is about. If you must summarize, make sure your summary is longer than your entire argument section.

The heading and subheadings, if you include any, should be objective and neutral. You want the judge to think you're honest and fair — and wrong. Label your headings "Introduction," "Middle," and "Conclusion."

Start every argument in your opening by predicting what your adversaries might say. Then don't say why they're wrong.

In your reply briefs, don't respond to your adversaries' arguments. Restate everything you've already mentioned in your brief. Or, even better, raise new arguments.

Rule #10. When All Else Fails, Confuse Them With Words.

Write like a real lawyer. Confound with legalese: "aforementioned," "hereinafter," "said," "same," and "such." Obfuscate with jargon: "the case at bar" or "in the instant case." Bore with clichés: "wheels of justice"; "exercise in futility"; and "leave no stone unturned."

Treasure nominalizations: Turn powerful verbs into weak nouns. Although nominalizations are wordy and abstract, relying on them is good for losing. *Examples:* Use "allegation" instead of "allege," "violation of" instead of "violating," and "motioned for" instead of "moved."

Metadiscourse is verbal throat clearing. That's why you need to know about this device. Every chance you get, use "it is important to remember," "it is significant to note," "it should be emphasized that," and "it goes without saying that." Use "it is well settled" and "it is hornbook law" to describe what the less-educated might call a split in authority.

Use the passive voice everywhere: Be obtuse about who's doing what to whom. Write "The victim was murdered by the defendant" instead of "The defendant murdered the victim." When the issue is who murdered the victim, obscure the actor altogether: "The victim was murdered" should suffice.

Grammar — adverbs, adjectives, nouns, pronouns, agreement, parallelism, sentence fragments, verb tenses, fused participles, and gerunds — is a big blur for some lawyers. Keep it that way. Who knew about modifiers? Don't learn the difference between "who" and "whom" and "that" and "which." Mixed metaphors will set you apart from your adversary: Your brief will cause the judge to close the barn door after a horse shut it.

Throw in adjectives and even some adverbial excesses. Use "clearly" and "obviously," especially when your point isn't at all clear or obvious.

Use plenty of acronyms, especially those you never define.

Be cowardly. Include doubtful, timid, and slippery equivocations, phrases, and words: "at least as far as I'm concerned," "generally," "probably," "more or less," and "seemingly." That's how you show what a lousy case you have.

Instead of writing in the positive, write in the negative. Appellate judges, who themselves love expressions like "This case is remanded for proceedings not inconsistent with this opinion," will identify with expressions like "This case is not unlike . . . ."

Have fun and play with language. Create run-on sentences. Combine complicated, multisyllabic words. Construct long sentences — learned lawyers do that all the time.

Employ foreign words. It behooves you to replace English words with French, Italian, and Spanish. If you're educated, use Latin. The judge will think you're sui generis.

Redundancy is necessary in a losing brief. Two or more words are better than one. Use the following: "advance planning," "few in number," and "true facts."

Reach for a thesaurus every chance you get. Use different words to mean the same thing. Forcing the judge to expend energy reaching for a dictionary leaves little time for the judge to read your brief.

Talk about freedom, justice, equity, and the American dream. Bring up the U.S. Constitution even if your case has nothing to do with a constitutional issue.

Include at least one rhetorical question in each paragraph. Isn't that a good way to tell the judge you're a LOSER?

Conclusion

Writing a bad brief takes preparation and practice. The preparation begins during law school. Few things academic apply to practicing in the real world. Lawyers must know the real rules to writing a bad brief — the things you never learned in law school and, likely, the things no one will teach you when you practice law.

If a winning brief makes it easy for the judge to rule for you and want to rule for you, the loser's goal is to make it hard for the judge to rule for you and to make the judge want to rule against you.

If you're unlucky enough to have smart, honest colleagues edit your brief, ignore their suggestions. Accuse them of being egotistical to deflect any notion that they're offering helpful comments. And disregard all comments offered by your partner or supervisor. Their comments might be subversive — and actually favor

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your client.

Sometimes judges will feel so sorry for you that they'll wade through your brief to find a nugget of merit. You might have a chance to win — er, lose — after all. But if losing is your goal, just read your brief, typos and all, at oral argument.

Gerald Lebovits is a judge of the New York City Civil Court, Housing Part, in Manhattan and an adjunct professor at Columbia Law School and St. John's University School of Law. He thanks Alexandra Standish, his court attorney, for her help with humor. Judge Lebovits's e-mail address is GLebovits@aol.com.

In case you win despite following the foolproof advice in this column, the Legal Writer suggests some more articles. They'll help you lose your next case: Sarah B. Duncan, *Pursuing Quality: Writing a Helpful Brief*, 30 St. Mary's L.J. 1093, 1132–35 (1999); James W. McElhaney, *Twelve Ways to a Bad Brief*, 82 ABA J., Dec. 1996, at 74; Jane L. Istvan & Sarah Ricks, *Top 10 Ways to Write a Bad Brief*, N.J. Law. 85 (Dec. 2006); Eugene Gressman, *The Shalls and Shall Nots of Effective Criminal Advocacy*, Crim. Just., Winter 1987, at 10; Peter J. Keane, *Legalese in Bankruptcy: How to Lose Cases and Alienate Judges*, 28 Am. Bankr. Inst. J. 38 (2010); Alex Kozinki, *The Wrong Stuff: How You Too Can . . . Lose Your Appeal*, 1992 BYU L. Rev. 325, 325–29 (1992); Paul R. Michel, *Effective Appellate Advocacy*, 24 Litig. 19, 22–23 (Summer 1998); William Pannill, *Appeals: The Classic Guide*, 2 Litig. 6 (Winter 1999); Harry Pregerson, *The Seven Sins of Appellate Brief Writing and Other Transgressions*, 34 UCLA L. Rev. 431, 433–37 (1986); Harry S. Silverstein & Edwin C. Ruland: *How to Lose an Appeal Without Really Trying*, 4 Colo. Law. 831 (1975); Harry Steinberg, *The 10 Most Common Mistakes in Writing an Appellate Brief*, N.Y.L.J., Aug. 31, 2009, at S4; Susan S. Wagner, *Making Your Appeals More Appealing: Appellate Judges Talk About Appellate Practice*, 59 Ala. Law. 321 (Sept. 1998); Joseph F. Weis, Jr., *The Art of Writing a Really Bad Brief*, 43 Fed. Law. 39 (Oct. 1996).