NOTA BENE

BY KATHLEEN DILLON NARKO

Writing Effective Briefs in the Age of AI

Every spring, first-year law students shift from objective evaluation to persuasion in their legal writing classes. Students can't wait to write briefs. To set up my students to write effective, persuasive briefs, and to reinforce best practices for the rest of us, I turned to Howard Suskin, a partner at Jenner & Block. He is an expert with 40 years of practice experience as a litigator and arbitrator. Suskin shared his views on writing effective briefs as well as the role of generative AI in drafting them.

Howard Suskin

He emphasizes that the structure of briefs remains the same, with or without AI. Suskin sees AI as a useful tool, but one that needs careful verification. And in good news for us, Suskin does not see AI replacing human attorneys anytime soon.

The Winning Brief's Structure

Suskin offers a practical framework for crafting persuasive briefs by focusing on the four foundational components: introduction, facts, argument, and conclusion. His guidance emphasizes clarity, credibility, and narrative coherence.

Introduction: Start Strong

The introduction sets the tone and focuses the dispute. Keep it simple and direct. Remember that this is the first impression you make to the court. State your relief clearly, and create a roadmap for the reader. Generally, the introduction should be no more than a page or two. Suskin recommends thinking of it as an elevator pitch—selling your case to your audience in a short period of time.

Facts: Tell a Clear, Credible Story

This section lays the groundwork for what the case covers. Suskin says, "The best statement of facts tells a story that is sympathetic to your client." Tell your client's story in a narrative that is easy to follow and interesting to the reader. Personalize your client. Even a corporation has a personal side—perhaps in community service or economic benefit. Do not refer to the parties as plaintiff and defendant. Instead, include names for each party.

Clarity is important here, as in all sections of the brief. Simple words and sentence structure are easiest to follow. Remember that every paragraph must have a topic sentence. Each paragraph should move the story forward, and no paragraph should exceed half a page. Suskin recommends lawyers generally follow chronological order.

Support every fact with a citation to the record or a pleading. Every fact in your story must be correct. Otherwise, you lose credibility the moment the court finds an unsupported or incorrect statement.

Argument: From Legal Principles to Application

The argument section is where legal authority meets the factual narrative. In this section, cite all the legal authority and precedent that requires the result you want the court to reach, when combined with your facts.

Organization of the argument is key. Use argumentative headings that state the points you intend to prove. These headings should break the argument into "bite-size pieces" and allow the table of contents to function as a clear outline of your reasoning.

Accuracy is paramount. Cite authority with discipline. State the rule first, then cite the case. Always use pinpoint citations. Citing an overruled case "blows you out of the water in terms of credibility," cautions Suskin.

Tone matters. Drop sarcasm, hostility, and legalese. Use active voice and simple words.

Conclusion: Reinforcing the Requested Relief

The conclusion should briefly and explicitly restate the relief sought. It is not the place to introduce new arguments but to reinforce the brief's purpose and leave the court with a clear understanding of the requested outcome.

AI's Effect on Brief Writing

Generative AI does not change the rules of brief writing. All Suskin's tips above are just as relevant in the world of AI.

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Suskin sees AI as a tool that may help attorneys get a jump on writing. However, one must always verify what AI generates. Finally, Suskin predicts AI will never replace the judgment of an experienced lawyer.

A Useful Tool

Suskin views AI as a useful tool to overcome writers block, especially for junior attorneys. He remembers how he struggled as a young associate to start the writing process. Staring at a blank screen can be overwhelming. AI can help junior attorneys create a rough first draft. "And once you have it on paper, you can edit, and you can rearrange and reorganize."

AI may give you a jumpstart, but you must leave time to edit. Writers need to transform the first AI draft into their own work. Suskin says he can tell when AI writes a document. "There is a stilted style sometimes to AI that I think comes off as being not genuine because the reader understands that it was a computer that generated the message and not a lawyer being thoughtful about what is being communicated." He emphasizes, "You should edit it to make sure that it's in your voice."

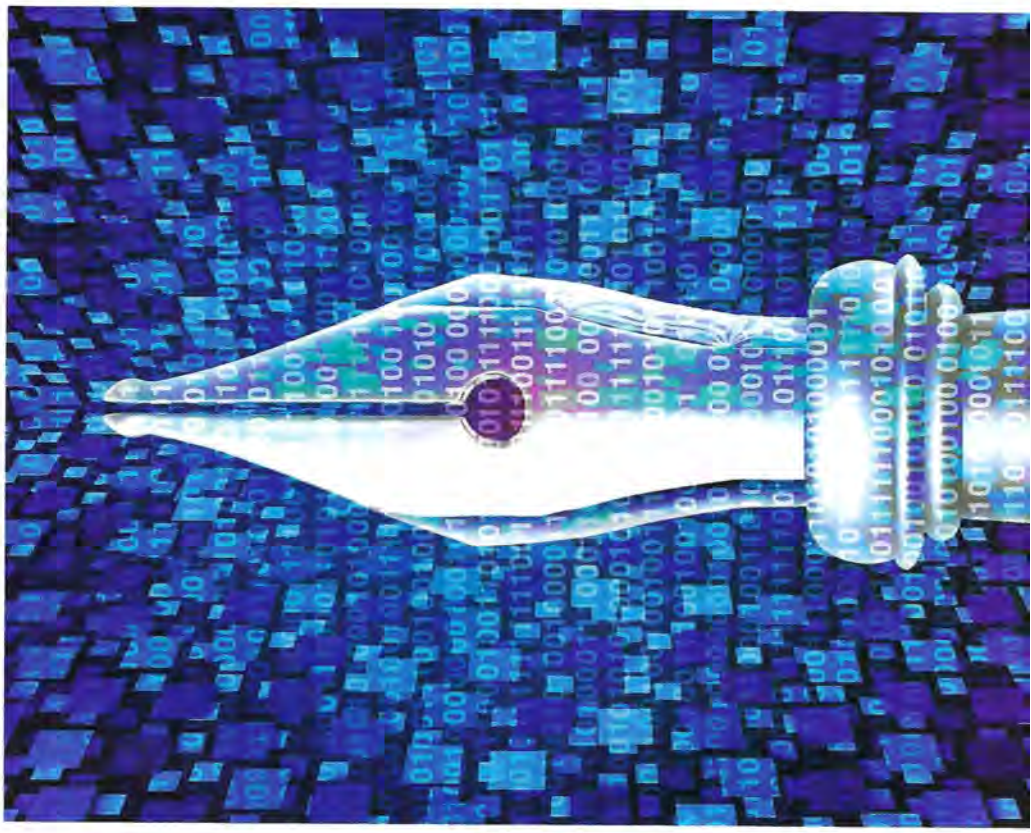
Always ask yourself if the AI product is good. AI may not follow all the tips above for writing an effective brief. Does the statement of facts tell an interesting story? Have you personalized your client? Make sure you leave yourself enough editing time to make the writing your own.

The Need to Verify

For Suskin, his most important tip for lawyers who use AI to write briefs is to verify. "You cannot rely on AI sources without actually reading the sources to confirm first, that they exist, and second, that they say what AI claims they said."

However helpful the AI-generated text may appear, attorneys must verify every case citation and argument. Suskin points to the many cases where attorneys have filed briefs with "hallucinated cases that don't exist, quotes that don't exist, and citations that don't exist." The consequences for a lawyer who does that can be serious—from court fines to referrals to disciplinary panels.

Attorneys "shouldn't be under the illusion that [AI] does all the work for you, because it doesn't. And you have to do the verification and confirmation on your own." It's fine for junior attorneys to use AI to come up with a first draft, but if they give Suskin "citations that have been overruled, that's a huge problem. Huge, huge problem." It all goes back to the requirement to verify. Suskin emphasizes, "I view AI as a tool. It certainly can be helpful, but it can't be trusted."



Along with verifying case citations, attorneys also need to check local court rules and ethics rules for any requirements to disclose AI use.

Attorney Judgment Still Needed

The big question on many attorneys' minds is whether AI will replace lawyers altogether. Suskin answers with a firm "no." Any work product generated by AI is just a starting point. Suskin points out, "It's not a substitute for independent thinking and reflection and analysis."

While AI may help attorneys gather information and write a first draft, Suskin doubts it will ever "be a substitute for the judgment that a lawyer brings to the table." He continues, "What a lawyer really brings to the table is their years of experience as to what is the best route to go. And I don't think AI has that ability to do that."

Suskin drives home the value of an attorney's subjective, analytical judgment by noting, "In one situation, you may want to push certain buttons, in terms of making your arguments. But in other instances, if we say this, it may turn off the judge or the jury. And with our client, that's a good point to make." He concludes, "I don't know that [AI] will be able to replicate that."

AI may make it easier to write a first draft of a brief, but it is still no substitute for human analysis and judgment. Attorneys will do well to learn time-saving skills from AI, but in the end, we still need to know what makes an effective brief. We cannot truly evaluate a draft unless we can envision the best brief for our case. AI will keep getting better, but the profession will still depend on lawyers who can think strategically, exercise judgment, and shape the most persuasive brief. ■