Judicial Writing: A Benchmark for the Bench

Course Outline

1.   Introduction

   1.   Judging entails professional writing and demands literary skills.

   2.   Writing disciplines, illuminates, and legitimizes judging.

   3.   Prepare thoroughly before you start writing.

   4.   Trial judges have a tougher writing task than appellate justices.

   5.   Minimize *obiter dicta*.

2.   Anatomy of a Judgment

   2.1.   Contents

   2.2.   Issues for Determination

   2.3.   The Introduction

   2.4.   Facts and Procedural History

   2.5.   Analysis and Discussion

   2.6.   Conclusion and Disposition

   2.7.   List of Authorities

3.   Issues for Determination (Reformulate the issues and answer them with reasons.)

   3.1.   What is an issue or question for determination?

   3.2.   Place the issues upfront.

   3.3.   To reformulate an issue, find governing law and isolate *legally significant* facts.

   3.4.   Devote time and effort to reformulating the issues.

   3.5.   Learn the methods of drafting issues. Then unlearn most of them.

       3.5.1.   The *whether* fragment

       3.5.2.   The one-sentence statement

       3.5.3.   The one-sentence question

       3.5.4.   The Catholic catechism

       3.5.5.   The *under-does-when* formula

       3.5.6.   Garner's deep-issue format

   3.6.   Learn how to present the issues.

   3.7.   Use deductive logic to render doctrinal holding.

   3.8.   Forget *circumstances of this case*.

3.9.   Prefer legal to procedural juxtapositions.

3.10.   Phrase the issues like questions.

4.   **The Introduction** (Write an executive summary.)

5.   **Facts and Procedural History** (Narrate the pertinent facts and procedural history: recount only information relevant to your analysis or the outcome.)

5.1.   Tell a story from the facts.

5.2.   Make your narrative transcend mere storytelling.

5.3.   Invest your story with a theme.

5.4.   Let the facts tell the story—don't interpret, don't interrupt.

5.5.   Shun the dating game and other data mess.

5.6.   Call parties and witnesses their names.

5.7.   Assign substantive descriptions to the data.

5.8.   Fit facts to law.

5.9.   Think like a novelist—borrow fiction elements.

5.10.   Summarize the procedural background

6.   **Analysis and Discussion** (Analyze, discuss, and synthesize the parties' arguments, authorities, evidence, facts, and law. Explain your reasoning and point to your conclusion.)

PART A- Organization, Structure, and Posture

6.1.   Invoke (or, more rarely, invent) the rule of the case.

6.2.   Don't flatter yourself.

6.3.   Interrogate the raw material.

6.4.   Draw up an outline. Use point headings.

6.5.   Structure your analysis proactively, not reactively.

6.6.   Explain your rationale.

6.7.   Use roadmaps to magnify organization.

6.8.   Use topic sentences to reinforce rhetorical narration.

6.9.   Use transition, bridging, and paragraphing to boost linguistic coherence.

6.10.   Use exquisite civility to soothe bench-bar and inter-court sensitivities.

6.11.   Reject contrary propositions with reasons; dismiss lame propositions with panache.

6.12.   Don't copy and paste from the parties' documents or the record. And quarantine the plague of false *ratios*.

6.13.   Choose a structural formula for your analysis.

PART B- Concurring and Dissenting with Style on a Multi-Judge Bench

6.14. Stand together whenever possible, but don't force it.

6.15. Dissent if you must—emulate US Supreme Court's style.

PART C- Citations and Quotations

6.16. Minimize citations and quotations. Scrutinize your authorities and isolate their *rationes decidendi*.

6.17. Use explanatory synthesis.

6.18. Avoid 'talking footnotes.' Banish bibliographic algebra to footnotes.

6.19. Nurture the pinciting habit.

6.20. Insert explanatory parentheticals.

7.   Conclusion and Disposition (Close your decision by granting, modifying, or refusing relief; issuing directions; or remanding the case.)

8.   Logic and Clear Thought

8.1.   Introduction to Logic

8.2.   Logical Fallacies

8.2.1. Accident

8.2.2. *Argumentum ad baculum*

8.2.3. *Argumentum ad hominem*

8.2.4. *Argumentum ad ignorantiam*

8.2.5. *Argumentum ad misericordiam*

8.2.6. *Argumentum ad verecundiam*

8.2.7. Complex Question

8.2.8. Converse Accident or Hasty Generalization

8.2.9. False Cause

8.2.10. *Ignoratio Elenchi*

8.2.11. Red Herring

8.2.12. The Straw Man

8.2.13. *Argumentum ad Antiquitam*

8.2.14. Slippery Slope

8.2.15. Weak Analogy

8.2.16. Amphiboly