Chapter 17: Persuasive Writing

# What is the difference between predictive and persuasive writing?

Your written product shifts from advisory to advocacy. Persuasive writing argues for a particular outcome that will benefit the client. When you write documents that should persuade, you have a position to promote, and your writing should reflect that. Later in this chapter, we will look at tools that you will use to present facts and analysis in ways that can convince the reader to agree with you.

# What is the same with both predictive and persuasive writing?

You still have to tell the truth and you cannot omit legally or factually significant details because they are not beneficial for your client. You still will use your tools of rule and case synthesis and you will still organize your analysis using CREAC. None of the basic analytical skills change; it is the presentation of what your analysis reveals that you alter.

# What are types of persuasive legal documents?

Types of persuasive documents include, but are not limited to:

1. Demand letters
2. Settlement letters
3. Complaint
4. Answer
5. Motions
6. Trial Briefs
7. Appellate Briefs

# How do I persuade in my writing?

There are three common methods to persuade your audience: *logos*, or logic; *pathos*, or emotion; and *ethos*, or credibility. Logical arguments appeal to the reader’s logical side through incisive legal analysis and reasoning using the CREAC structure. Emotional arguments can drive the reader to want to give your side the relief it is seeking through an effective and cohesive narrative because it feels right. Finally, you maintain credibility with your audience through being honest, accurate, and professional; logic and emotion do no good if the reader does not trust you. Through your writing you can use each of these methods to appeal to your reader to find in your favor. There are many tools that you can use to make your writing persuasive and still remain logical and credible. Below is a list of tools and a quick explanation of each one.

# Tools to Persuade

**Theory of the case:** Developing and using a cohesive theory throughout your brief helps your reader understand the law and facts in the light in which you want the reader to see them. A successful theory captures what is essential for your side to win and then weaves those essential points into the entirety of the brief. Identify your strongest points first. Also identify the easiest-to-understand argument for why your side wins. By effectively developing and using a theory of your case, you will ensure that you have a coherent brief that has no holes or gaps and that explains everything the reader needs to know to find for your side.

**Structure and Organization:** First, follow the format that you are told to use by the local rules (or professor’s instructions). Use your CREAC structure for the argument and citation of authority. Lead with your strongest argument. Focusing on maximizing your side’s strengths and minimizing your side’s weaknesses. Do not make every possible argument that shows your side should prevail; instead, develop the arguments that are most probable to lead to success.

**Tone and Style:** Write positively and affirmatively. Argue why your side wins, not why the other side loses. Do not use rhetorical questions. Avoid overly dramatic statements because they will reduce your credibility and fail to progress your argument. Stay focused on the case and why your side should prevail. Do not attack the parties, opposing counsel, judges, or any other person.

Primacy and Recency: What readers encounter first will shape how they perceive the remaining information conveyed; use that to your advantage. Show your strongest points or facts first. What readers encounter last will cement how they perceive the previous information received; use that to your advantage as well. End on a strong note with a conclusion that clearly explains why your side should prevail/

**Sandwiching Bad Facts:** There will always be facts that are not ideal for your side. You still have to disclose them. However, you can choose where you share those facts. The best place is to put a bad fact between good facts! For instance, if I want my mom to let me go to the mall, then I would say, “Mom, Cheryl says her mom can drive us to the mall! My room is not picked up like you asked. However, I have cleaned the bathroom and vacuumed the hallway!”

**Active versus passive voice**: Yes, you should always use the active voice when you can. However, using passive voice can be effective when you want to place distance between the actor and the action. For instance, “I ran over your dog” hurts a lot worse than “Your dog was run over by my car.”

**Remember your audience:** When asking the court to find in your favor, use phrases like “the court should” rather than “the court must.” No court wants to be told what to do. Any audience prefers easy-to-follow and well-thought-out legal arguments that do the heavy lifting for the reader. What will be an appropriate emotional appeal will depend on who is reading your persuasive piece. And, finally, remember that you must maintain your credibility at all times.

# Conclusion

Persuasive writing is one of the primary forms of analysis and writing that lawyers perform. Remember that when you are asked to complete a persuasive writing task, you know what the legal conclusion should be. When writing persuasively, you are showing the reader how the path through legal analysis leads to the destination that best benefits your assigned position.