

CLE materials for

Effective Writing and Editing for Federal Law Clerks

The Federal Judicial Center has provided the attached materials to assist courts in program planning and in applying for continuing legal education (CLE) credit for the interactive program *Effective Writing and Editing for Federal Law Clerks*. The materials include a program description, faculty biographies, a continuing legal education application form, and a certificate of attendance for the program.

*The Center is unable to process individual applications for CLE credit therefore there is no pre-approval, but these materials will help you facilitate the process in your court. **Each individual attorney is responsible for submitting an application for CLE and for any payments that are required.** The Center does not have course numbers for the jurisdictions; you will have to acquire that information once you apply for CLE credit in the jurisdiction for which you desire credit. With regards to the Court Training Specialist signature that is required on the Certificate of Attendance you can have your court's Training Coordinator/Training Specialist or Human Resources Specialist/Human Resources Manager sign the certificate. After it is signed please submit the form to the CLE Commission or State Bar for which you seek credit. We strongly recommend that you contact your state's CLE board for information about CLE requirements, which vary from state to state.*

If you have any questions about the CLE application process please contact Rhonda Starks at 202-502-4059 or rstarks@fjc.gov. If you have any questions about the program in general please contact Brenda Baldwin-White at 202-502-4112 or bbaldwin-white@fjc.gov.

Program Objectives for Effective Writing and Editing for Federal Law Clerks

By the end of the program, you will be able to

- use basic structural principles to impose easily comprehensible, step-by-step order on your written analyses
- pare away irrelevant facts and immaterial arguments, and synthesize legal principles
- employ discipline and practice to select precise words and to craft effective sentences and paragraphs

Effective Writing and Editing for Federal Law Clerks

An E-Learning Presentation from the Federal Judicial Center

This program was developed and created over the course of one year. The final product was advertised to Federal Law Clerks on May 9, 2017.

Table of Contents

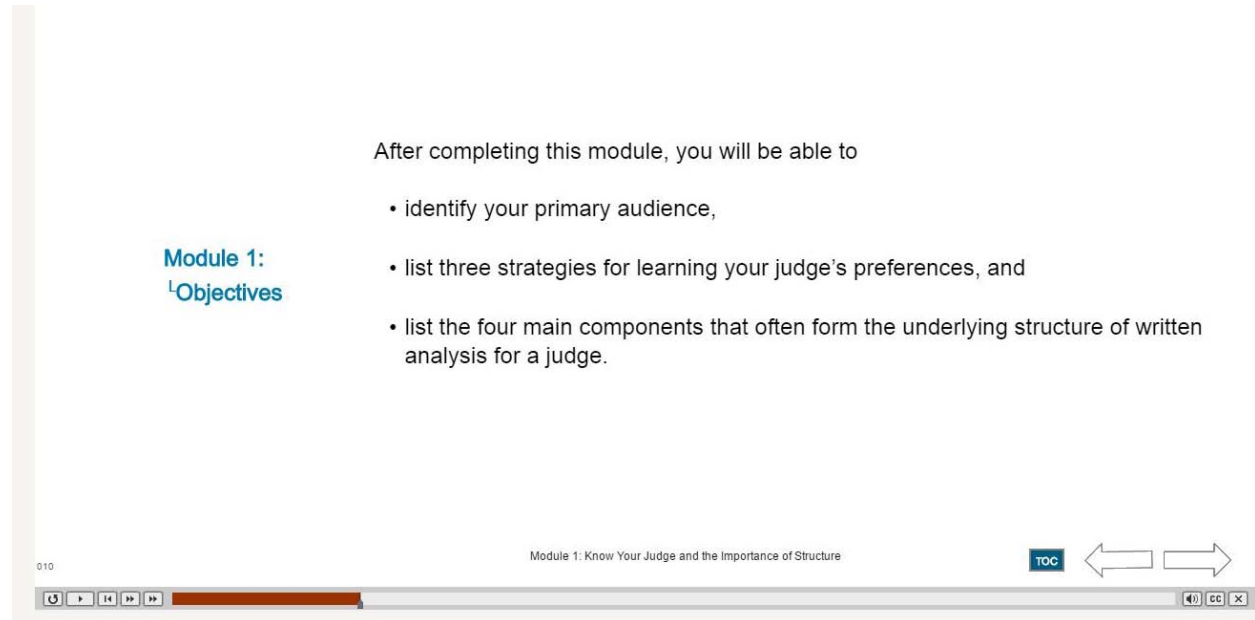
The screenshot displays an e-learning interface. On the left side, there is a vertical navigation bar with the text "Table of Contents" in red, an orange button labeled "Home", and a green button labeled "Navigation". The main content area features a list of 10 items, each with a blue arrow-shaped icon containing a white number and a grey rectangular button with the item's title. The items are: 1. Know Your Judge and the Importance of Structure; 2. The Introduction; 3. The Statement of Facts; 4. Discussion Section: *Overarching Structure*; 5. Discussion Section: *Applicable Law*; 6. Discussion Section: *Application of Law to Facts*; 7. Words; 8. Sentences; 9. Paragraphs; 10. Final Reality Check. A blue "Return" button is located at the bottom right of the list. At the very bottom of the interface is a horizontal control bar with various navigation icons (back, forward, search, etc.) and a progress indicator.

1	Know Your Judge and the Importance of Structure
2	The Introduction
3	The Statement of Facts
4	Discussion Section: <i>Overarching Structure</i>
5	Discussion Section: <i>Applicable Law</i>
6	Discussion Section: <i>Application of Law to Facts</i>
7	Words
8	Sentences
9	Paragraphs
10	Final Reality Check

Return

Know Your Judge and the Importance of Structure

Module 1: Objectives



010

Module 1: Know Your Judge and the Importance of Structure

010

Module 1: Objectives

After completing this module, you will be able to

- identify your primary audience,
- list three strategies for learning your judge's preferences, and
- list the four main components that often form the underlying structure of written analysis for a judge.

TOC

010

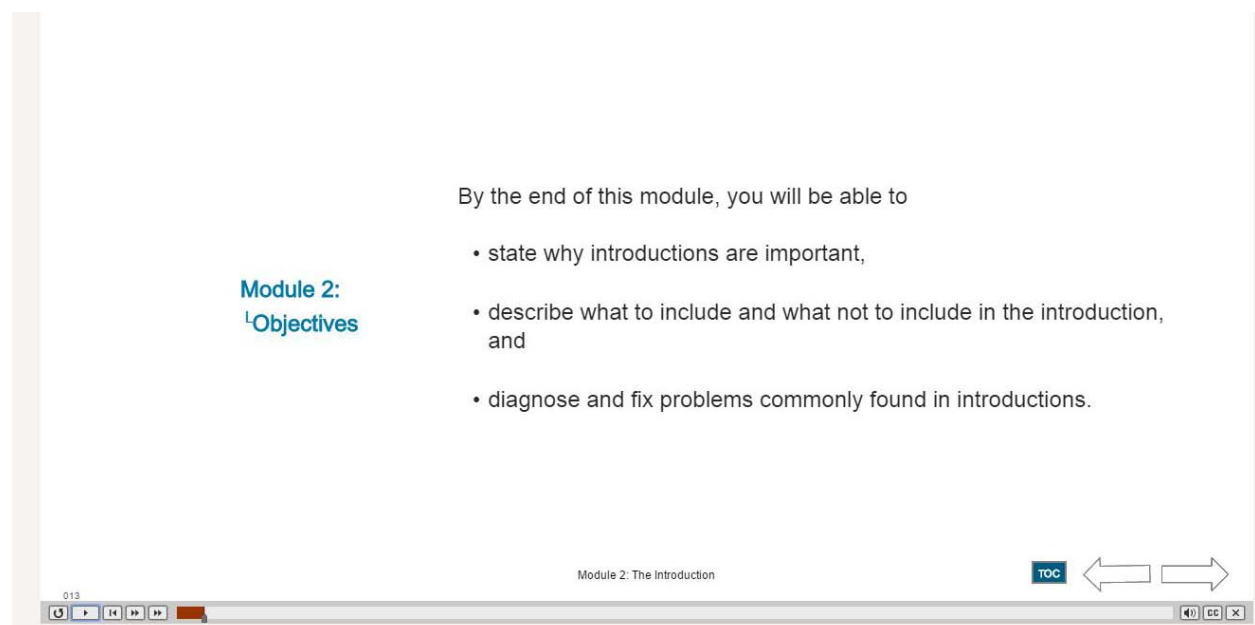
Module 1: Know Your Judge and the Importance of Structure

010

Module 1: Know Your Judge and the Importance of Structure

The Introduction

Module 2: Objectives



013

Module 2: The Introduction

013

Module 2: Objectives

By the end of this module, you will be able to

- state why introductions are important,
- describe what to include and what not to include in the introduction, and
- diagnose and fix problems commonly found in introductions.

TOC

013

Module 2: The Introduction

013

Module 2: The Introduction

Module 2: Example 1

Example 1: Crafting the Introduction

Let's look at the introduction in a published judicial opinion that appears to the right. *NLRB v. Starbucks*. As you read the introduction, ask yourself:

- Does it clearly set out what's at stake?
- How does it handle the background context necessary to understand the issue?

After you've finished reading the introduction, advance to the next screen to hear my commentary on it. ^L

This petition for enforcement of an order of the National Labor Relations Board ("the Board") and an employer's cross-petition for review primarily concern the validity of an employer's dress code provision limiting employees to displaying only one pro-union button on their work uniforms. Also at issue are the discharges of two employees. These issues arise out of efforts to unionize employees at several Starbucks coffee shops in Manhattan. The Board seeks enforcement of its August 26, 2010, order finding Respondent–Cross–Petitioner Starbucks Corporation, d/b/a Starbucks Coffee Company ("Starbucks" or "the company"), to have committed several unfair labor practices, including the three challenged in this case, in violation of subsections 8(a)(1) and 8(a)(3) of the National Labor Relations Act ("the Act"), 29 U.S.C. § 158(a)(1), (3). Starbucks cross-petitions to set aside the challenged portions of the Board's Order. We conclude that Starbucks's enforcement of its one button dress code is not an unfair labor practice, nor was one of the two challenged discharges; as to the other discharge, a remand is required. We therefore enforce in part, grant the cross-petition for review in part, and remand.

Module 2: The Introduction

TOC



015



The Statement of Facts

Module 3: Objectives

Module 3: Objectives

By the end of this module, you will be able to

- describe the purpose of the statement of facts,
- list three guidelines to follow when drafting a statement of facts, and
- help your judge by focusing on material facts and using effective topic sentences.

028

Module 3: The Statement of Facts

TOC



Module 3: Example

Example:
The Statement of Facts

Read the excerpt on the right. As you do, ask yourself:

- What role do headings play?
- How is the narrative flow organized?
- What is the general tone of the recital?

After you're done reading the introduction, you will have the opportunity to hear my commentary on it.

Facts concerning the alleged price-fixing conspiracy. . . . United was a member of the International Air Transport Association ("IATA") at all times relevant to this appeal. IATA enjoyed limited antitrust immunity in the European Union through a "block exemption." In 1993, the European Union's Directorate General for Competition ("DGC") sent a letter to an official at IATA specifying that the block exemption did not cover the coordinated implementation of surcharges. This letter was shared with IATA members. The United States Department of Transportation ("DOT") communicated a similar conclusion to IATA. Nevertheless, in 1993 IATA adopted a surcharge "upon the pretext of recouping increased costs." As a result, the DGC withdrew IATA's block exemption and subsequently denied an application for an individual exemption for the surcharge. . . .

The Chapter 11 proceeding. On December 9, 2002, United filed a petition for relief under Chapter 11 of the Bankruptcy Code. As part of its claims notification procedures, United identified DHL as a potential creditor holding more than twenty disputed claims. . . .

Post-confirmation developments. On February 14, 2006, law enforcement officials raided the offices of several airlines, other than United, allegedly involved in a fuel surcharge price-fixing conspiracy. . . .

030 Module 3: The Statement of Facts TOC

Discussion Section: Overarching Structure

Module 4: Objectives

Module 4: Objectives

By the end of this module, you will be able to

- explain the purpose of the discussion section of a memo or order,
- list three guidelines that will help you organize your analysis from the top down, and
- use "roadmapping" and an issue-by-issue approach to impose order on your writing for the judge.

048 Module 4: The Discussion Section: Overarching Structure TOC

Module 4: Example

Example

Read the following decision involving a trade-secret counterclaim and the award of fees under the Copyright Act.

After you're done reading the introduction, you will have the opportunity to hear my commentary on it.

... Mattel appeals both the district court's decision that MGA's trade-secret counterclaim was compulsory and the award of fees under the Copyright Act.

A. MGA's trade-secret claim

Counterclaims-in-reply are permitted only if they are compulsory. . . . To be compulsory, a counterclaim must "arise[] out of the transaction or occurrence that is the subject matter of the opposing 'party's claim.'" . . .

MGA's claim did not rest on the same "aggregate core of facts" as Mattel's claim. While Mattel asserted many claims that covered numerous interactions between Mattel and MGA, . . .

Because MGA's trade-secret claim should not have reached this jury, we vacate the verdict along with the related damages, fees and costs. . . .

B. Copyright attorneys' fees.

Whether or not a prevailing party is entitled to attorneys' fees under the Copyright Act "is reposed in the sound discretion of the district courts." . . .

Here, the district court explained, "MGA [has] secured the public's interest in a robust market for trendy fashion dolls populated by multiple toy companies." . . .

The district court properly exercised its discretion in awarding and calculating attorneys' fees 'and costs....

050

Module 4: The Discussion Section: Overarching Structure

TOC



Discussion Section: Applicable Law

Module 5: Objectives

Module 5: Objectives

By the end of this module, you will be able to

- state two primary principles for effectively discussing the law applicable to an issue in your writing for the judge; and
- improve statements of the law by ensuring those statements concretely synthesize legal authority.

054

Module 5: The Discussion Section: Applicable Law

TOC



Module 5: Example

Example: Crafting the Statement of Applicable Law

Take a look at this example, and as you do, ask yourself:

- Does it provide a concrete, detailed statement of the legal standard?
- Does it effectively synthesize the relevant authorities?

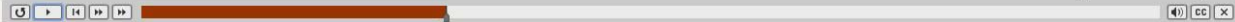
After you're done reading the statement, advance to the next screen to hear my commentary on it.

Counterclaims-in-reply are permitted only if they are compulsory. [citation]. To be compulsory, a counterclaim must "arise[] out of the transaction or occurrence that is the subject matter of the opposing party's claim." [citation]. We apply "the logical relationship test for compulsory counterclaims." [citation]. "A logical relationship exists when the counterclaim arises from the same aggregate set of operative facts as the initial claim, in that the same operative facts serve as the basis of both claims or the aggregate core of facts upon which the claim rests activates additional legal rights otherwise dormant in the defendant." [citation] . . . "[E]ven the most liberal construction of ['transaction'] cannot operate to make a counterclaim that arises out of an entirely different or independent transaction or occurrence compulsory under Rule 13(a)."

056

Module 5: The Discussion Section: Applicable Law

TOC



Discussion Section: Application of Law to Facts

Module 6: Objectives

Module 6: Objectives


By the end of this module, you will be able to

- state two primary principles for effectively discussing the law applicable to an issue in your writing for the judge, and
- improve statements of the law by ensuring those statements concretely synthesize legal authority.

068

Module 6: The Discussion Section: Application of Law to Facts

TOC



Words

Module 7: Objectives

Module 7: Objectives

By the end of this module, you will be able to

- state three rules to follow when using verbs,
- state three rules to follow when using nouns, and
- describe when to use adjectives and adverbs and when to avoid them.

076

Module 7: Words



Sentences

Module 8: Objectives

Module 8: Objectives

By the end of this module, you will be able to

- identify the greatest impediment to good legal writing, and
- state three rules to follow when writing sentences.

103

Module 8: Sentences



Paragraphs

Module 9: Objectives

Module 9: Objectives

By the end of this module, you will be able to

- explain why topic sentences are so important,
- explain the role of “signal” words, and
- identify four visual cues that will make your writing clear.

110

Module 9: Paragraphs and the Entire Written Piece



Final Reality Check

Module 10

Faculty Biographical Information

Professor Ezra Ross teaches legal logic, strategy and persuasion in UCI Law's Lawyering Skills course. He joins UCI from UCLA Law, where he taught lawyering skills and co-supervised UCLA's trial advocacy clinic.

Professor Ross researches and writes about under-recognized regulatory breakdowns. His current project, The Collection Gap (article), analyzes administrative agencies' failure to substantially collect the financial penalties they impose on corporate offenders.

Professor Ross graduated cum laude from Harvard Law School and began his career as a judicial clerk for U.S. District Judge A. Howard Matz. Before teaching, Professor Ross practiced commercial litigation at Quinn Emanuel Urquhart Oliver & Hedges, where he was four times named a Super Lawyer-Rising Star by Los Angeles magazine.

Thomas E. Spahn practices as a commercial litigator with McGuireWoods in Tysons Corner, Virginia. Tom was selected as the 2013 metro-Washington DC "Lawyer of the Year" for "Bet the Company Litigation" by The Best Lawyers in America (Woodward/White, Inc.). He has served on the ABA Standing Committee on Ethics and Professional Responsibility, and is a Member of the American Law Institute and a Fellow of the American Bar Foundation. Tom has written extensively on attorney-client privilege, ethics and other topics, and has spoken at over 1,400 CLE programs throughout the U.S. and in several foreign countries. He graduated *magna cum laude* from Yale University and received his J.D. from Yale Law School.

UNIFORM APPLICATION FOR ACCREDITATION OF CONTINUING LEGAL EDUCATION

To the state of:

1. Sponsoring organization:
 Name: **Federal Judicial Center**
 Address: **Education Division (ED)**
One Columbus Circle, NE
Washington, DC 20002-8003
 Telephone: **202-502-4059 x4059** Fax: **202-502-4299**
 Email: **rstarks@fjc.gov**
2. Title of educational activity: **Effective Writing and Editing for Federal Law Clerks**

3. Date(s) and location(s): **varies**

4. Registration fee: **- 0 -**

5. Writing surface available? **Yes** **No**

6. Delivery Method(s): **faculty in room with participants;**
 telephone to broadcast site; **interactive video;** **webinar;** **audiotape presentation;** **streaming video;**
 interactive computer/Internet; **discussion leader present**

7. Type of Law code(s): 1. ; 2. (Optional) ; 3. (Optional)
 Difficulty Level: **Beginner;** **Intermediate;** **Advanced**

8. Advertised to: **Lawyers;** **Clients;** **Others (specify): Federal Attorneys**

9. List any admission restrictions:

10. "In-house activity" requirement (see local rules to determine applicability):
 open/publicized to outside lawyers **outside lawyers are 0% of faculty** **clients are 100% of audience**

11. Method of evaluation: **participant critique;** **independent evaluator;** **none;**
 other:

12. Description of materials to be distributed: **total pages ;** **loose-leaf** **bound**
 Distributed: **before program;** **at program;** **other:** **Online**

13. REQUIRED ATTACHMENTS to this application:
- time schedule (brochure, course outline, course description)
 - table of contents or equivalent
 - faculty name(s) and credentials (if not in brochure or description)
 - complete set of materials (only in states where required)
 - fees (only in states where required)

14. Total minutes of instruction, not including breaks, meals or introductions:
 General (non-ethics): **180**
 Ethics (minutes): **0** Substance Abuse: **0**
 Total: **180**
 Other: **0**

15. Approval by other states: Granted by:
 Denied by:

16. Submitted by: **employee of sponsor/provider;** **individual lawyer**

STATE ACCREDITATION OFFICE
 NOTICE OF DECISION
 Course No. _____

(To be completed by the state accreditation office and returned to applicant)

The following action has been taken on this application:

RETURNED for more information. Please complete each item on the form indicated by the number(s) circled below:
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16

APPROVED for ___ CLE credits, Including ___ Ethics credits

DENIED Reference _____

SEE ATTACHED MATERIALS.

 Name of person applying (type or print)

 Address (if different than above)

 Signature

 Date

 Phone and Fax (if different than above)

Effective Writing and Editing for Federal Law Clerks
an e-Learning presentation from the Federal Judicial Center

ATTENDANCE CERTIFICATE

This certificate should be filed with the appropriate MCLE Board or Commission within 30 days of this activity.

(keep a copy for your records)

Date you participated in the program: _____

Registrant signature

Registrant name

Address

City, state, zip code

Attorney No. (if applicable) for _____
State

I attended a total of _____ hours at the viewing site in _____
(Please note that different jurisdictions approve varying numbers of credit. The total hours above is the actual number of 60-minute hours attended.)

COURT TRAINING SPECIALIST CERTIFICATION

This will certify that the above-named person attended the *Effective Writing and Editing for Federal Law Clerks* e-Learning presentation on the date indicated above.

Court Training Specialist signature