



2016 Masters-In-Equity Bench Bar

Friday, October 14, 2016

Order Drafting Tips

Hon. Aphrodite K. Konduros

Patricia A. Howard

Andrew L. Johnson

Master in Equity CLE
Order Writing Tips
Handout Materials

Judge Aphrodite Konduros
Chief Staff Attorney Patricia Howard
Staff Attorney Andrew Johnson
S.C. Court of Appeals

BIOGRAPHY

JUDGE KONDUROS

Judge Aphrodite Konduros is a member of the S.C. Court of Appeals. She currently serves as vice-chairman of the Chief Justice's Commission of the Profession, on the S.C. Senate Judiciary Sentencing Reform Commission, as co-chairman of the Supreme Court Common Pleas Docketing Committee, as subcommittee chairman of the Supreme Court Family Court Docketing Committee, as subcommittee chairman of the Chief Justice's Commission on the Profession's Magistrates and Municipal Judges Mentoring Program, and on the Supreme Court E-filing Committee. She is also the 2013 recipient of the American Board of Trial Advocates' Jurist of the Year Award. She was elected to the Family Court in February 2002 to fill the unexpired term of the Hon. Amy C. Sutherland, retired. On February 6, 2008, Judge Konduros was elected to the S.C. Court of Appeals to finish the unexpired term of the Hon. Donald W. Beatty after he was elected to the S.C. Supreme Court. She was reelected to the S.C. Court of Appeals in 2015. She and her husband, Sam Konduros, live in Greenville.

HYPOTHETICAL

Snow v. Bolton

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	Civil Action No. 2016-CP-00-00000
)	
Jon Snow,)	
)	
Plaintiff,)	
v.)	ORDER
)	
Ramsay Bolton,)	
)	
Defendant.)	
)	

This is a declaratory judgment action between Jon Snow (Plaintiff) and Ramsay Bolton (Defendant) regarding the ownership of a property located at 1 Winterfell in The North, Westeros (Winterfell). The Honorable Tywin Lannister referred this matter by a September 1, 2016 order of reference. At the hearing on October 1, 2016, Kit Harington represented Plaintiff, and Iwan Rheon represented Defendant.

Case Summary

On August 1, 2016, Plaintiff filed a complaint against Defendant, seeking an order declaring him the legal owner of Winterfell. Plaintiff claimed Defendant wrongfully possessed Winterfell in early 2016 and that Plaintiff was the rightful owner. (Complaint 1-12.) Defendant answered the complaint, denying the allegations. (Answer pp. 3-7.) At the October 1, 2016 hearing, Plaintiff presented the testimony of Sansa Stark, former owner of Winterfell, and Petyr Baelish, an expert in property ownership manipulation. Defendant presented the testimony of

Walda Frey, owner of lands adjacent to Winterfell, and Melisandre, an expert in property ownership by divine right.

The only issue before the court is whether Plaintiff is the legal owner of Winterfell.

Factual Analysis

On January 8, 2014, Eddard Stark—then the rightful owner of Winterfell—was declared insane and died. (Exh. 9.) Pursuant to his last will and testament, after Eddard "lost his head" and passed away, Eddard's son Rob Stark became the legal owner of Winterfell. (Exh. 2; Deposition of Cersei Lannister p 7.) On February 3, 2015, Rob and his wife died at their wedding. (Exh. 6.) Rob failed to execute a last will and testament. (Deposition of Walda Frey p 10.) By order of the People of the North, Sansa became the legal owner of Winterfell on February 28, 2015. (Ex. 1). However, when Sansa attempted to enforce her claim, Defendant intercepted her, unlawfully married her, and abused her. (Exhs. 11-20.) Sansa subsequently escaped Defendant and sent a raven to Plaintiff, who at the time lived at 7 Raven, Castle Black, Westeros, notifying him of her troubles. (Hearing Tr. pp 32-37.)

Sansa believed she could not gain the people's support of her claim to Winterfell, so she contracted with Plaintiff and gave him her alleged fee simple ownership interest in Winterfell. (Exh. 2; Deposition of Sansa p 8.) Plaintiff visited Winterfell on April 30, accompanied by Sansa and Baelish. (Affidavit of Baelish pp 6-7.) Plaintiff testified that after a brief meeting between him and Defendant, Defendant failed to understand Plaintiff's claim to Winterfell and Defendant refused to grasp the importance of Baelish's support. (Hearing Tr. pp 90-94.) Ultimately, Plaintiff felt "trapped" in the discussion, while Defendant believed his argument was as straight as an arrow. (Hearing Tr. pp 42, 75-76.) However, with Baelish's support, Plaintiff kicked Defendant out of Winterfell and "treated him like a dog." (Hearing Tr. pp 67-88.)

Defendant, though handcuffed in that predicament, still claimed ownership to Winterfell.

(Deposition of Sansa p 12.) Soon thereafter, Plaintiff filed his complaint.

Findings of Fact

1. This court has jurisdiction over this matter by the agreement of the parties involved. (Hearing Tr. pp 1-3.)
2. This court finds the People of the North granted Sansa ownership of Winterfell in fee simple. (Hearing Tr. pp 301-02.)
3. This court finds Sansa granted her entire interest in Winterfell to Plaintiff. (Hearing Tr. pp 67-69.)
4. This court finds Plaintiff attempted to reconcile matters with Defendant. (Hearing Tr. p 5.)
5. This court finds Defendant refused to participate in any meaningful conversation with Plaintiff regarding claims to Winterfell. (Hearing Tr. pp 201-09.)
6. This court finds Melisandre not to be credible, given that she previously supported two other individuals' claim to the entirety of Westeros. (Exhs. 7-8.)
7. Based upon Frey's drunken state at trial and his bias toward Sansa and Plaintiff, this court finds Frey not to be credible. (Hearing Tr. pp 201-09.)
8. Because of affidavits from every family in the North explaining their respect for Plaintiff, this court finds Plaintiff to be credible. (Exhs. 11-302.)
9. This court makes no credibility finding regarding Baelish because this court finds it difficult to believe or not believe his statements.
10. Though this court believes Sansa is naïve, it finds her to be credible.
11. Defendant is a murderous, hateful being. (Exhs. 1-302.)

Conclusions of Law

Based upon the above findings of fact, this court concludes as follows:

1. This is an action at law. *See Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Declaratory judgment actions are neither legal nor equitable and, therefore, the standard of review depends on the nature of the underlying issues."); *Query v. Burgess*, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006) (Whe[n] . . . the main purpose of the complaint concerns the determination of title to real property, it is an action at law.).
2. Sansa was the rightful owner of Winterfell in February 2015. *See Clegane v. Clegane*, 123 S.C. 456, 457, 123 S.E.2d 456, 458 (2012) ("When a property owner dies without a will, the people in the community—by a majority—may issue an order granting ownership of the property to another individual.").
2. The burden of proving property ownership rested with Plaintiff. *See In re R.R. Martin*, 987 S.C. 654, 655-56, 321 S.E.2d 753, 755 (Ct. App. 2010).
3. By Sansa's land grant, Plaintiff became the legal owner of Winterfell. *See Code of the Seven Gods § 6.80(c)* (Supp. 2009) (permitting one to transfer property ownership to another by a raven delivery of a transfer scroll, provided wax seals the scroll).
4. Although Westeros permits transfers of property by force, this permission is not available to someone as sick as Defendant. *See § 6.08(c)* ("One so inclined to mutilate his friends, kill his family, and abuse his wife, is not entitled to real property ownership.").

ORDERED, ADJUDGED, and DECREED that

1. Plaintiff's request for declaratory judgment is granted,
2. Plaintiff is the legal owner of Winterfell, and
3. Defendant holds no legal interest in Winterfell.

IT IS SO ORDERED.

Honorable Tyrion Lannister
Hand of the Master-in-Equity

October 5, 2016
Richland County, South Carolina

BREVITY EXAMPLES

"Held, that in determining whether an act or omission which constitutes a permitting of a thing caused the damage which subsequently resulted, what is involved is the selection from the events preceding the damage of the events which are, for the purposes of the law, to be seen as in the relevant sense causally responsible for it." *Petrou v. Hatzigeorgiou*, New South Wales Court of Appeal, Australian Tort Reports 68, 559 (1991).

"And in the outset we may as well be frank enough to confess, and, indeed, in view of the seriousness of the consequences which upon fuller reflection we find would inevitably result to municipalities in the matter of street improvements from the conclusion reached and announced in the former opinion, we are pleased to declare that the arguments upon rehearing have convinced us that the decision upon the ultimate question involved here formerly rendered by this court, even if not faulty in its reasoning from the premises announced or wholly erroneous in conclusions as to some of the questions incidentally arising and necessarily legitimate subjects of discussion in the decision of the main proposition, is, at any rate, one which may, under the peculiar circumstances of this case, the more justly and at the same time, upon reasons of equal cogency, be superseded by a conclusion whose effect cannot be to disturb the integrity of the long and well-established system for the improvement of streets in the incorporated cities and towns of California not governed by freeholders' charters." *Chase v. Kalber*, 153 P. 397, 398 (Cal. Dist. Ct. App. 1915).

CLARITY EXAMPLES

“To adopt Petitioner's argument that it should be allowed to rely upon information not given, which was not asked for, would result in bad policy and negatively affect the ability of the Comptroller's Office to answer any taxability question because of a fear that possible questions which could be raised by someone like Petitioner, but aren't, will not be answered, and result in claims like the one before us today.” *The 1993 Legaldegoon Awards*, 4 Scribes J. Legal Writing 107, 114 (1993).

"The (adj.) party successfully (verb) the store[']s safe with the assistance of two employees [A]fter being (adv.) (verb) by the trial court, Appellant was (verb) by the (noun) of the trial court's (noun) by erroneously listening to trial counsel's (adj.) advi[c]e when Appellant (verb) Appellant's rightful (plural noun) and 'free will' unknowingly. . . . Respondent having a malicious intent to prosecute with the useage [sic] of motivated witnesses and misstatements of material facts know that the case suffered (adj.) (plural noun)."

“Clearly it is unconscionable to allow MERS, Respondent’s assignor, to obtain a security in interest in Appellant’s residence with complying with the required disclosures dictated by the South Carolina Consumer Protection Code. Since Respondent is not a holder in due course, Respondent took the mortgage subject to all claims and defenses that Appellant had or may have against MERS. Thus a genuine issue of material fact exists as to whether or not Respondent and MERS violated the South Carolina Consumer Protection Code which claims may be asserted against Respondent as there are issues of fact as to whether Respondent is a holder in due course.” *From a final brief in our court of appeals.*

THE OXFORD COMMA

With the Oxford Comma:

We invited the rhinoceri, Washington, and Lincoln.



Without the Oxford Comma:

We invited the rhinoceri, Washington and Lincoln.





TIPS ON ORDER WRITING

Master-in-Equity CLE
Judge Aphrodite Konduros

ORDER WRITING TIPS

Master-in-Equity CLE
Judge Aphrodite Konduros

PRESENTERS

- **The Honorable Aphrodite K. Konduros**
 - Judge, South Carolina Court of Appeals
- **Patricia Alexander**
 - Chief Staff Attorney, South Carolina Court of Appeals
- **Andrew Johnson**
 - Staff Attorney, South Carolina Court of Appeals

OVERVIEW

1. **Standard of review on appeal from a Master-in-Equity's (MIE) order**
2. **Structural tips**
3. **Stylistic tips**
4. **Grammar suggestions**
5. **Citation tips**
6. **Examples of orders**
7. **Taking the content from final order to appeal**

1. STANDARD OF REVIEW

1. STANDARD OF REVIEW

STANDARD OF REVIEW

Generally

- "Our scope of review for a case heard by a [MIE] who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury." *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1990).

STANDARD OF REVIEW

Equitable Matters

- "When reviewing an equitable action heard first by a [MIE] and appealed directly to an appellate court, the court should review the facts in accordance with its own view of the preponderance of evidence in the record." *Osterneck v. Osterneck*, 374 S.C. 573, 577, 649 S.E.2d 127, 129 (Ct. App. 2007).
- "This broad scope of review does not require the appellate court to ignore the fact that the [MIE] was in a better position to assess the credibility of witnesses and assign weight to their testimony." *Id.*

STANDARD OF REVIEW

Legal Matters

- "In an action at law tried before a [MIE], the appellate court 'will affirm the [MIE]'s factual findings if there is any evidence in the record which reasonably supports them.'" *Estate of Tenney v. S.C. Dep't of Health & Env'tl. Control*, 393 S.C. 100, 105, 712 S.E.2d 395, 397 (2011) (quoting *Query v. Burgess*, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006)).
- "However, '[a]n appellate court may determine questions of law with no particular deference to the [MIE].'" *Id.* (quoting *Verenes v. Alvanos*, 387 S.C. 11, 14, 690 S.E.2d 771, 772-73 (2010)).

2. STRUCTURE

2. STRUCTURE

STRUCTURE

GENERALLY

- Structure is the foundation of a good order
- Requires more than simply signing a party's proposed order
- Final Orders are *the* document from which a party appeals
- Completing certain steps regarding structure can help convince the appellate court to affirm on appeal

STRUCTURE

FIRST STEP

- Identify the parties
- State the action's nature
- Include relevant pleading and procedural information
- State the issues before your court



STRUCTURE
FIRST STEP
EXAMPLE

Nature of action

Parties

Pleadings and Procedural information

Issue

STATE OF SOUTH CAROLINA
COUNTY OF HURLAND

IN THE COURT OF COMMON PLEAS
Case Action No. 2014-CP-00000

vs. _____

Plaintiff

vs.

Defendant

ORDER

On August 1, 2014, Plaintiff filed a complaint against Defendant, seeking an order declaring her to be the legal owner of Watershed. Plaintiff claimed Defendant wrongfully purchased Watershed in early 2014 and that Plaintiff was the rightful owner. (Complaint 1-11.) Defendant answered the complaint, denying the allegations. (Answer pp. 1-7.) At the October 1, 2014 hearing, Plaintiff presented the testimony of Gary York, former owner of Watershed, and Peter Smith, an expert in property ownership investigations. Defendant presented the testimony of Wade Gray, owner of bank adjacent to Watershed, and Alexander, an expert in property ownership by adverse right.

The main issue before the court is whether Plaintiff is the legal owner of Watershed.

STRUCTURE
SECOND STEP

- Summarize facts from pleadings
- Include only relevant facts
- Is the fact related to the dispositive issues

STRUCTURE **SECOND STEP EXAMPLE**

Factual Analysis

On January 8, 2014, Edward Smith—then the rightful owner of Wineschki—was declared insane and died. (Exh. 9.) Plaintiff is his last will and testament, after having “lost his mind” and passed away. (Exh. 9.) Plaintiff is his last will and testament for the legal owner of Wineschki. (Exh. 9.) Deposition of Carol Lammert p. 7.) On February 1, 2015, Rob and his wife died at their wedding. (Exh. 6.) Rob failed to execute a last will and testament. (Deposition of Walter Frye p. 10.) By order of the People of the State of Illinois, Justice because the legal owner of Wineschki is February 26, 2015. (Ex. 11.) However, when Justice attempted to enforce her claim, Defendant attempted her, unlawfully retained her, and abused her. (Exh. 11-20.) Justice subsequently escaped Defendant and was a victim to Plaintiff, who at the time lived at 7 Evans, Castle Rock, Wisconsin, another line of her brother. (Hearing Tr. pp. 23, 27.)

Justice believed she could not give the people's support of her claim to Wineschki, so she contacted with Plaintiff and gave her the support she needed to continue to Wineschki. (Exh. 2.) Deposition of Justice p. 8.) Plaintiff visited Wineschki in April 2014, accompanied by Justice and Sarah. (Affidavit of Sarah pp. 4-7.) Plaintiff testified that after a brief meeting between her and Defendant, Defendant failed to understand Plaintiff's claim to Wineschki and Defendant refused to grasp the importance of Sarah's support. (Hearing Tr. pp. 90-94.) Unsurprisingly, Plaintiff felt “trapped” in the discussion, while Defendant believed her signature was as strong as an arrow. However, with Sarah's support, Plaintiff's and Defendant's out of Wineschki and “found her like a dog.” (Hearing Tr. pp. 17-18.) Defendant, though handcuffed in her performance, did succeed according to Wineschki. (Deposition of Justice p. 12.) Some benefits, Plaintiff did her complaint.

STRUCTURE **THIRD STEP**

- **Make factual findings**
 - e.g., “Taking into account the credibility of the witnesses”
- **Define the relative jurisdiction of your court**
- **Define the parties in detail, if necessary**
- **Express relevant findings of fact**
- **NOTES:**
 - Support all information with cites to the record
 - If a fact is relied upon in the law section, that fact must be found in the fact-finding section

STRUCTURE
THIRD
STEP
EXAMPLE

Jurisdiction

Relevant findings of fact

Credibility findings

Findings of Fact

1. This court has jurisdiction over this matter by the agreement of the parties involved. (Civney Tr. pp. 4-5.)
2. This court finds the People of the North granted Saxon ownership of Waverell in the region. (Civney Tr. pp. 200-42.)
3. This court finds Saxon granted her estate interest in Waverell to Plaintiff. (Civney Tr. pp. 47-48.)
4. This court finds Plaintiff attempted to reconcile matters with Defendant. (Civney Tr. p. 1.)
5. This court finds Defendant refused to participate in any meaningful conversations with Plaintiff regarding claims to Waverell. (Civney Tr. pp. 201-06.)
6. This court finds Defendant not to be credible, given that she previously supported two other individuals' claims to the entirety of Waverell. (Civney Tr. 7-8.)
7. Based upon Fery's admission made at trial and his testimony Saxon and Plaintiff, this court finds Fery not to be credible. (Civney Tr. pp. 201-08.)
8. Because of affidavits from every family in the North regarding this subject for Plaintiff, this court finds Plaintiff to be credible. (Civney Tr. 11-201.)
9. This court makes an credibility finding regarding Saxon because the court finds it difficult to believe or not believe her statements.
10. Though this court believes Saxon a victim, it finds her to be credible.
11. Defendant is a malicious, harmful being. (Civney Tr. 802.)

STRUCTURE
FOURTH STEP

- **Make conclusions of law**
- **Explain whether the action is in law or in equity**
- **Make step-by-step legal conclusions**
 - Skipping a step could be fatal to the disposition
- **Explain which party bears the burden of proof**
- **Discuss the law**
 - Include citations from cases/statutes
- **Apply the law**
 - Include citations from the record and cases/statutes

STRUCTURE
FOURTH
STEP
EXAMPLE

Action in law or equity

Burden of proof

Application and conclusions of law

Conclusions of Law

Based upon the above findings of fact, this court concludes as follows:

1. "This is an action at law." See *Ang v. Adams*, 2011 E.C. 452, 438, 474 S.E.2d(3) 713 (2006). ("The primary judgment before me involves legal analysis and, therefore, the standard of review depends on the nature of the underlying issue."); *Shaw v. Shuman*, 371 S.C. 407, 418, 638 S.E.2d 437, 439 (2006) App. 2006 (W/64). "The main purpose of the companion case was the determination of title to real property, it is an action at law.")
2. "Title over the legal owner of Winterfell in February 2013." See *Clayton v. Clayton*, 129 S.C. 436, 437, 127 S.E.2d 438, 438 (2012) ("When a property owner dies without a will, the people in the company—to a majority—may vote an order granting ownership of the property to another individual.")
3. "The burden of proving property ownership rested with Plaintiff." See *In re E.E. Adams*, 347 S.C. 454, 475-56 (21 S.E.2d 751, 751 (2) App. 2005).
4. "No. Plaintiff's burden of proof for legal owner of Winterfell." See *Code of the State Courts* [§ 8-802] (App. 2014) (granting use to transfer property ownership to another by a court delivery of a transfer word provided was with the word).
5. "Although Witness permits transfer of property by deed, the possession is not suitable to continue in such a Defendant." See [§ 8-301] ("One or several to maintain his friends, full his friend; and show his will, is not suitable to real property ownership.")


STRUCTURE
FIFTH STEP

- Conclude the order
- "IT IS THEREFORE ORDERED"
- Date and sign

ORDERED, ADJUDGED, and DECREED that:

1. Plaintiff's request for declaratory judgment is granted.
2. Plaintiff is the legal owner of Winterfell, and
3. Defendant holds no legal interest in Winterfell.

IT IS SO ORDERED.



Tyrion Lannister
Honorable Tyrion Lannister
Hand of the Master-of-Equity

October 5, 2016
Richland County, South Carolina

STRUCTURE**MOTIONS FOR RECONSIDERATION**

- A MIE may generally deny a motion for reconsideration. See Rule 59, SCRPC (setting forth the rules for filing a motion for reconsideration).
- If a party raises issues in a motion for reconsideration that were not previously raised, the MIE should not address those new issues. See *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider.").
 - A proper way to address any new issue may be stated in simply one sentence: "This court will not consider any issues raised for the first time in a motion to reconsider."

3. STILE

Y

3. STYLE

STYLE

GENERALLY

- **Drop titles of persons**
 - e.g., Dr., Mrs., or Officer
 - This does not apply to a situation in which it may be necessary for clarity: "Mrs. Smith sold her interest; Mr. Smith refused to sell his."
- **Once a party is introduced, do not stray from his/her/its introduced moniker**
- **Limit unnecessary legalese**
 - e.g., "said contract" or "as per the code"
- **Omit unnecessary and irrelevant information**
 - e.g., dates with no effect, locations that play no role, and monikers never again introduced
- **Use known acronyms**
 - e.g., "The Office of Disciplinary Counsel (ODC) found"
 - Not "The Free Times (FT) reported"

STYLE**BREVITY AND CLARITY**

- Do not be too wordy in an order because this frustrates the true components that could be more succinctly explained by using less terms and not as many as written in the wordy order that has unnecessary additions.
 - **Be brief.**
- Fail to exhibit labyrinthine ideophones when untroublesome vocabulary executes your contemplation as luxuriantly.
 - **Be clear and readable.**

STYLE**BREVITY—EXAMPLES**

"Held, that in determining whether an act or omission which constitutes a permitting of a thing caused the damage which subsequently resulted, what is involved is the selection from the events preceding the damage of the events which are, for the purposes of the law, to be seen as in the relevant sense causally responsible for it." *Petrou v. Hatzigeorgiou*, New South Wales Court of Appeal, Australian Tort Reports 68, 559 (1991).

Held, when one act or omission permits another, this court views both acts or omissions as causally responsible for any resulting damage.

STYLE

BREVITY—EXAMPLES

"And in the outset we may as well be frank enough to confess, and, indeed, in view of the seriousness of the consequences which upon fuller reflection we find would inevitably result to municipalities in the matter of street improvements from the conclusion reached and announced in the former opinion, we are pleased to declare that the arguments upon rehearing have convinced us that the decision upon the ultimate question involved here formerly rendered by this court, even if not faulty in its reasoning from the premises announced or wholly erroneous in conclusions as to some of the questions incidentally arising and necessarily legitimate subjects of discussion in the decision of the main proposition, is, at any rate, one which may, under the peculiar circumstances of this case, the more justly and at the same time, upon reasons of equal cogency, be superseded by a conclusion whose effect cannot be to disturb the integrity of the long and well-established system for the improvement of streets in the incorporated cities and towns of California not governed by freeholders' charters." *Chase v. Kalber*, 153 P. 397, 398 (Cal. Dist. Ct. App. 1915).

This court's previous ruling in this appeal was erroneous. Therefore, this opinion supersedes that ruling.

STYLE

CLARITY—EXAMPLES

"To adopt Petitioner's argument that it should be allowed to rely upon information not given, which was not asked for, would result in bad policy and negatively affect the ability of the Comptroller's Office to answer any taxability question because of a fear that possible questions which could be raised by someone like Petitioner, but aren't, will not be answered, and result in claims like the one before us today." *The 1993 Legaldegoon Awards*, 4 Scribes J. Legal Writing 107, 114 (1993).

[Your guess is as good as ours.]

STYLE

CLARITY—EXAMPLES

STYLE

CLARITY—EXAMPLES

"The (adj.) party successfully (verb) the store[]s safe with the assistance of two employees . . . [A]fter being (adv.) (verb) by the trial court, Appellant was (verb) by the (noun) of the trial court's (noun) by erroneously listening to trial counsel's (adj.) advi[c]e when Appellant (verb) Appellant's rightful (plural noun) and 'free will' unknowingly. . . Respondent having a malicious intent to prosecute with the useage [sic] of motivated witnesses and misstatements of material facts know that the case suffered (adj.) (plural noun)."

From a pro se appellant's "Guilty Plea Explanation" to the South Carolina Court of Appeals.

STYLE

CLARITY—EXAMPLES

"The culpable party successfully pillaged the store[']s safe with the assistance of two employees [A]fter being dexterously inundated by the trial court, Appellant was entangled by the inveiglement of the trial court's peroration by erroneously listening to trial counsel's repugnant advi[c]e when Appellant capitulated Appellant's rightful entitlements and 'free will' unknowingly. . . . Respondent having a malicious intent to prosecute with the useage [sic] of motivated witnesses and misstatements of material facts know that the case suffered meritorious infirmities."

Two store employees assisted the culprit in robbing the store's safe. At trial, Appellant felt overwhelmed by the court's deceptiveness, and Appellant unknowingly gave up certain rights because his counsel gave him conflicting and improper advice. Respondent intentionally and maliciously prosecuted Appellant by misstating the facts and presenting biased witnesses.

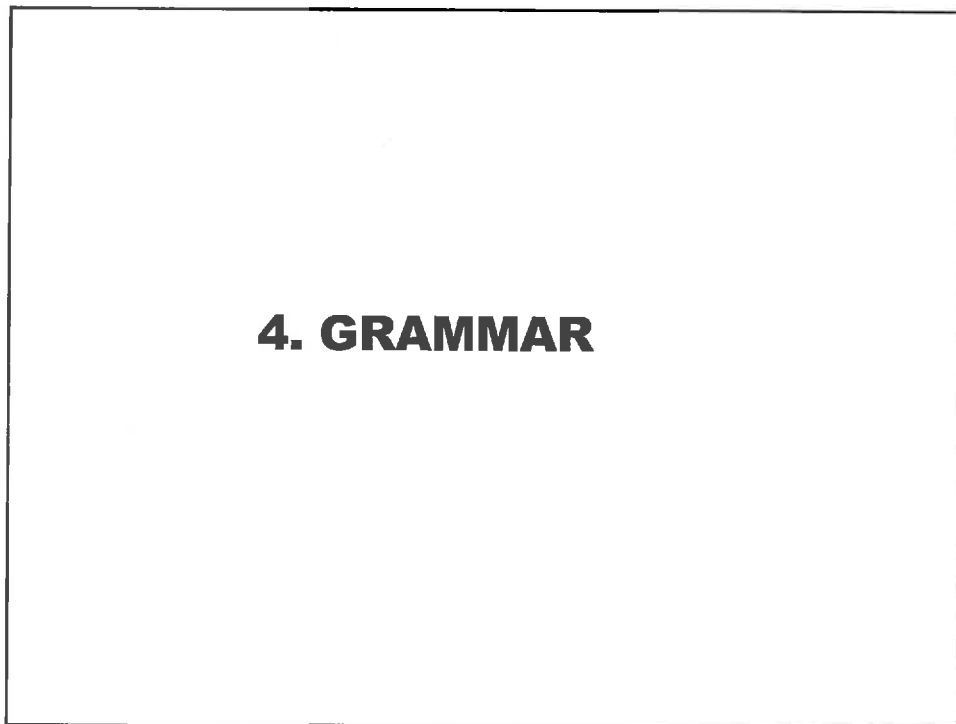
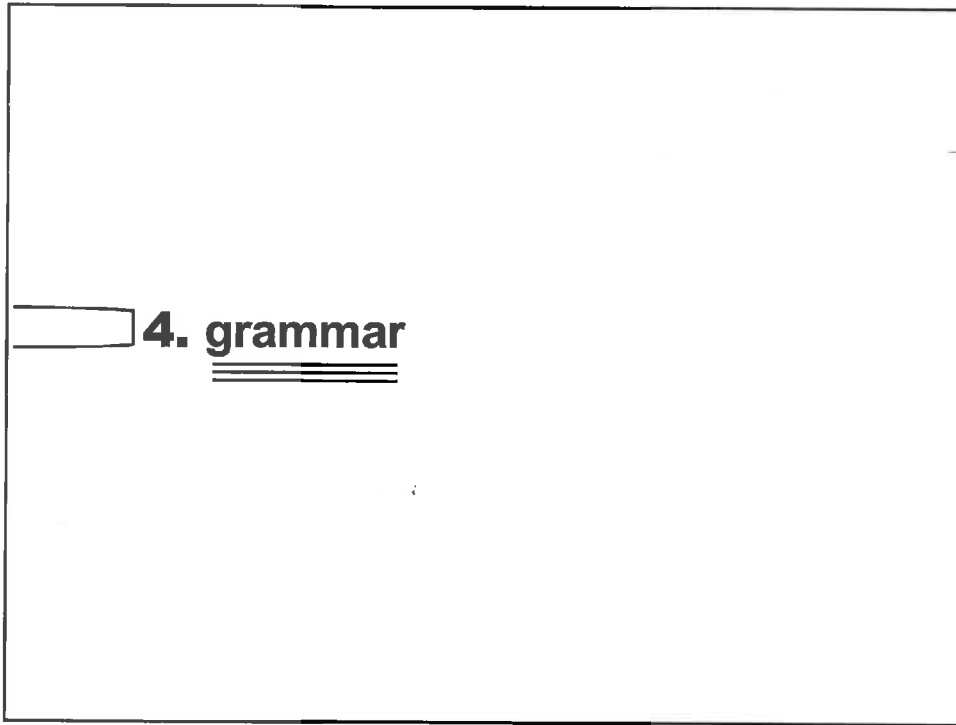
STYLE

CLARITY—EXAMPLES

"Clearly it is unconscionable to allow MERS, Respondent's assignor, to obtain a security interest in Appellant's residence with complying with the required disclosures dictated by the South Carolina Consumer Protection Code. Since Respondent is not a holder in due course, Respondent took the mortgage subject to all claims and defenses that Appellant had or may have against MERS. Thus a genuine issue of material fact exists as to whether or not Respondent and MERS violated the South Carolina Consumer Protection Code which claims may be asserted against Respondent as there are issues of fact as to whether Respondent is a holder in due course." *From a final brief filed with the court of appeals.*

First, if the issues are so "clear," why did the trial court rule against Appellant?
Revision: MERS unconscionably obtained a security interest in Appellant's residence because it failed to provide Appellant with required disclosures.[FN]
["Respondent is not a holder in due course" is a legal conclusion with no reasoning or authority.] A genuine issue of material fact exists regarding whether Respondents and MERS violated the Code and whether Respondent is a holder in due course.

[FN] [Cite to South Carolina Consumer Protection Code (the Code)]



GRAMMAR

GENERALLY

- “The greater part of the world’s troubles are due to questions of grammar.”
 - Michel de Montaigne
- Poor grammar may not affect substantive issues, but it could alter the author’s intended meaning
- Good grammar leads to easier reading

GRAMMAR

COMMAS

- **Comma usage:**
 - NOT: Let’s eat Bob!
 - BUT: Let’s eat, Bob!
 - NOT: Many people attended, including John Smith, a performer, Susan Thomas, an actress, and Clara Hamilton, a pianist.
 - BUT: Many people attended, including John Smith, a performer; Susan Thomas, an actress; and Clara Hamilton, a pianist.

THE OXFORD COMMA

With the Oxford Comma:

We invited the rhinoceri, Washington, and Lincoln.



Without the Oxford Comma:

We invited the rhinoceri, Washington and Lincoln.



GRAMMAR

COMMAS

GRAMMAR

PASSIVE VS ACTIVE VOICE

- **Passive voice** occurs when the action described is performed upon the subject or the subject is not in the sentence. For example, "Mistakes were made."
- **Active voice** involves the subject performing the action. For example, "I made mistakes."
- Active voice is typically clearer and more succinct than passive voice.
- **REMEMBER THE ZOMBIE TEST:** If you can add "by zombies" after the verb and it makes sense, passive voice is being employed.

GRAMMAR

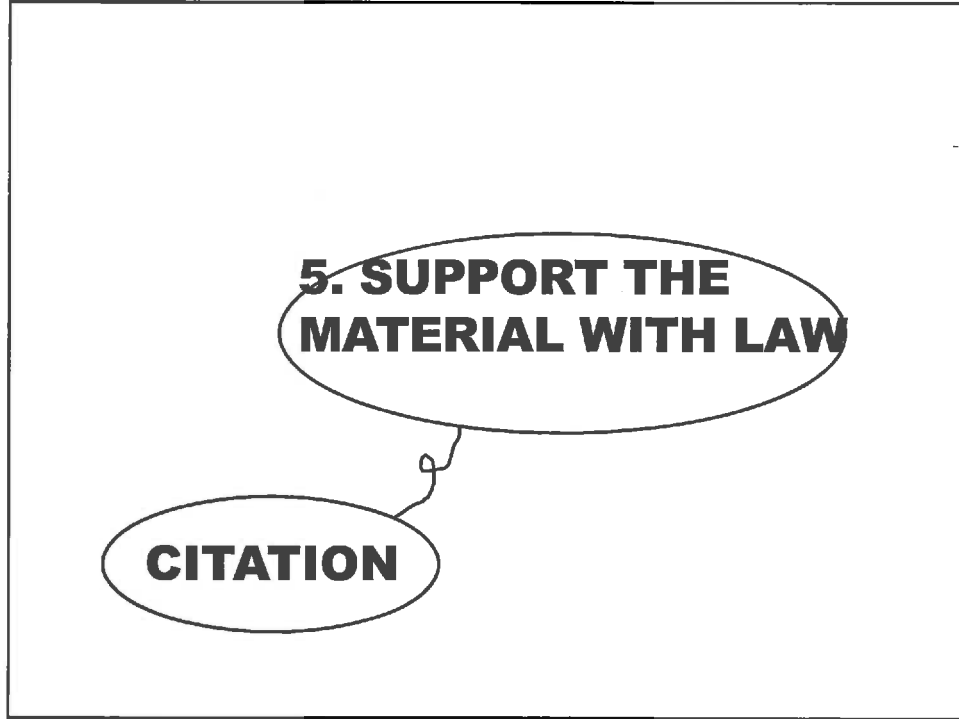
THAT VS WHICH

- "That" should be used with restrictive clauses and does not require a comma before.
- "Which" should be used with nonrestrictive clauses and requires a comma before.
- **Examples**
 - Restrictive: "The judge banged the gavel that was on his bench."
 - Nonrestrictive: "The judge sealed the exhibits, which were given to him by the clerk."

GRAMMAR

WHEN VS WHERE

- "Where" should be used only if explaining a subject's location.
- "When" should be used in most other instances.
- **Not: Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.**
 - But: Error is harmless beyond a reasonable doubt when it did not contribute to the verdict obtained.



5. CITATION

CITATION**GENERALLY**

- **Using the proper case or statute citation:**
 - Supports the writer's position
 - Gives the reader source material
- **Using improper citations:**
 - Leads to confusion in the conclusion
 - Leads to errors of law
- **A few general rules alleviate most citation concerns**
- **Pinpoint citations, parallel citations, signals, and code year matter**



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- **Strong Orders**

- Give the appellate court the grounds on which the MIE relied
- Explain to the appellate court the issues ruled upon
- Provide the appellate court with necessary credibility findings
- Supply each point with either (a) a citation to evidence supporting the factual finding or (b) legal authority supporting the MIE's position or conclusion

CONNECTING IT ALL

• **Weak Orders**

- Fail to adhere to the monikers originally introduced
- Do not contain specific supporting authority
- Make no credibility findings
- Fail to support factual statements with evidence in the record
- Rely on facts outside of the record
- Fail to address all arguments made by the losing party when the underlying conclusion is not dispositive

CONNECTING IT ALL

- **Should any honorable adjudicators presently in these quarters aspire to demand his or her inquiry into any component of the rhetoricians' dialogue, forthwith is the opportune juncture.**
 - *Does anyone have any questions or comments?*
- **Thank you for allowing us to speak**