



# 2021 Annual Conference

Niagara Falls, New York

**Judicial Opinion Writing**

September 27, 2021

Presented by:

**Brian Rudner, Esq.**

1.0 MCLE Skills

This program has been approved for credit in New York State for all attorneys including those who are Newly Admitted (less than 24 months) and administered by the Onondaga County Bar Association.



**BRIAN RUDNER, ESQ.** is presently serving as Principal Law Clerk to County Court Judge Edward T. McLoughlin, Dutchess County. He also serves as Town Justice in the Town of East Fishkill. Mr. Rudner earned his J.D. degree at St. John's University.



# JUDICIAL DECISION WRITING



Presented By:  
Brian Rudner, Esq.

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## OBJECTIVES: INCREASE YOUR UNDERSTANDING OF . . .

1. What a Motion is;
2. Benefits of Issuing Scheduling Orders;
3. How to Organize & Write a Decision & Order

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## WHAT IS A MOTION?

A “motion” is an oral or written request made by a party to the court for specific relief.



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## WHAT IS THE MOST COMMON MOTION?

### An omnibus motion

DISTRICT COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

THE PEOPLE OF THE STATE OF NEW YORK,

SUPPLICANT

vs.

DEFENDANT

vs.

Defendant

PLEASE TAKE NOTICE that upon the annexed affirmation of JEFFREY  
GRUBER, an attorney admitted to practice in the Courts of the State of New York, duly  
affirmed the 15th day of 11, 2001, the undersigned will move the District Court, County of  
Nassau, Part 17, on the 15th day of 11, 2001, at 9:30 a.m. to be heard in the presence of the clerk, or at  
such thereafter as counsel can be heard for the following designated Orders:

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## WHAT IS AN OMNIBUS MOTION?

Pursuant to **CPL § 255.20(2)**:

“All pre-trial motions, with supporting affidavits, affirmations, exhibits and memoranda of law, whenever practicable, shall be included within the same set of motion papers....”

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## WHAT SHOULD YOU DO WHEN YOU RECEIVE AN OMNIBUS MOTION?

1. Read it



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WHAT SHOULD YOU DO WHEN YOU RECEIVE AN OMNIBUS MOTION?

- ❖ What is it asking for?
- ❖ What **relief** do they want?
  - ❖ Hearing
  - ❖ Opinion
  - ❖ Conference
- ❖ What facts are alleged?
- ❖ What issue(s) are presented?

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WHAT SHOULD YOU DO WHEN YOU RECEIVE THE OMNIBUS MOTION?

2. Read the Response  
(and Reply if necessary)



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Wait until the motion is **fully briefed** before you start researching and writing your decision so that you know **all** the potential issues

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WHAT SHOULD YOU DO AFTER YOU READ THE MOVING PAPERS AND RESPONSE

3. Determine what relief you are going to:

- ❖ Grant
- ❖ Deny
- ❖ May be a combination of both

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WHAT TYPE OF RELIEF IS GENERALLY REQUESTED?

- ❖ Motions which request a hearing; AND
- ❖ Motions which do **not** request a hearing



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**Needs A Hearing**

- ❖ Motions to Suppress
  - ❖ Huntley
  - ❖ Wade
  - ❖ Mapp
- ❖ Motions About Questioning
  - ❖ Sandoval
  - ❖ Ventimiglia

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**Does NOT Need A Hearing**

- ❖ Reviewing Legal Sufficiency of the Accusatory Instrument

**It Depends**

- ❖ Miscellaneous Motions from Prosecution

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**WHAT SHOULD YOU DO AFTER YOU DECIDE WHAT RELIEF SHOULD BE GRANTED?**

4. Issue a:

**Scheduling Decision And Order**

- ❖ Grant/Deny the request for a hearing
- ❖ Set timetable for exchange of documents and next court date (if applicable)

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**IMPORTANT NOTE ABOUT SCHEDULING ORDERS:**

You can modify the dates after they are entered

If the parties require an extension, they can file a letter for you to consider and rule upon but it's the

**Court's obligation to move the case along**



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**TODAY WE WILL DISCUSS HOW TO:  
WRITE ORDERS RENDERING  
DECISIONS POST HEARING**

See "Omnibus Motions"  
in Topics A-Z for more  
info on merits of the  
motion and scheduling  
orders

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### SO WHERE ARE WE NOW?

1. An Omnibus Motion was filed
2. You decided to grant a hearing
3. You issued a Scheduling Order and Decision
4. The hearing occurred
5. It's time to write your Decision & Order

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### IMPORTANT NOTE ABOUT A HEARING:

Wait until **after** the hearing, and you have **decided the operative facts**, to begin writing your opinion



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**IMPORTANT NOTE ABOUT A HEARING:**

**YOU DECIDE!**



**THE FACTS**

- ❖ **NOT** the Prosecuting Agency
- ❖ **NOT** the Resource Center
- ❖ **NOT** your Clerk

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**IMPORTANT NOTE ABOUT A DECISION:**

The requirements for a decision (what we will talk about next) are **identical** whether it is a written decision or an oral decision from the bench



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**BEST PRACTICES WITH A DECISION:**

Consider reserving and rendering a **written** decision

- ❖ More time to think about, edit, and verify your opinion
- ❖ If done correctly, less susceptible to challenge on appeal

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**BEST PRACTICES WITH A DECISION:**

No statutory timeline for entering a written decision, but:

- ❖ Recommend **no longer** than thirty (30) days
- ❖ The sooner you write it the easier it is
- ❖ May help speed an alternate resolution of the case along, helping your docket

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**WRITE A  
DECISION AND ORDER**

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*Just the*  
**Basics**

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**COMPONENTS OF A WRITTEN DECISION & ORDER:  
THE EASY STUFF**

1. Caption (name of court, title of action and "Decision and Order")
2. Docket number
3. Your signature
4. Date issued



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**COMPONENTS OF A WRITTEN DECISION & ORDER:  
THE "MAIN BODY"**

1. Summary of the procedural history
  - Date of arrest
  - Charges
  - Date of arraignment
  - What papers, if any, filed in connection with motion

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**COMPONENTS OF A WRITTEN DECISION & ORDER:  
THE "MAIN BODY"**

1. Summary of the procedural history (Con't)
  - Date of Scheduling Order
  - Adjournments?
  - Date Any Hearings were Held
  - Attorneys Who Appeared at the Hearing

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COMPONENTS OF A WRITTEN DECISION & ORDER:  
THE "MAIN BODY"

2. Your findings of fact



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WRITING THE DECISION:  
FINDINGS OF FACT

**Can be based on:**

1. Your memory of the evidence offered
2. Your notes
3. A digital or stenographic record of the hearing
4. Motion papers and exhibits
5. Physical evidence received into evidence during the hearing

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WRITING THE DECISION:  
FINDINGS OF FACT

**Cannot** be based on facts  
**outside** the record.



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COMPONENTS OF A WRITTEN DECISION & ORDER:  
**THE "MAIN BODY"**

3. Your conclusions of law



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COMPONENTS OF A WRITTEN DECISION & ORDER:  
**THE MAIN BODY**

4. The reasons for your determination

5. Your disposition

- Motion is granted; OR
- Motion is denied

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COMPONENTS OF A WRITTEN DECISION & ORDER:  
**IMPORTANT NOTE**

As Applicable to  
Aforementioned Items 2-4:

CPL § 710.60(6): Applies to motions  
to suppress evidence, but a good  
rule of thumb for all decisions &  
orders on motions.

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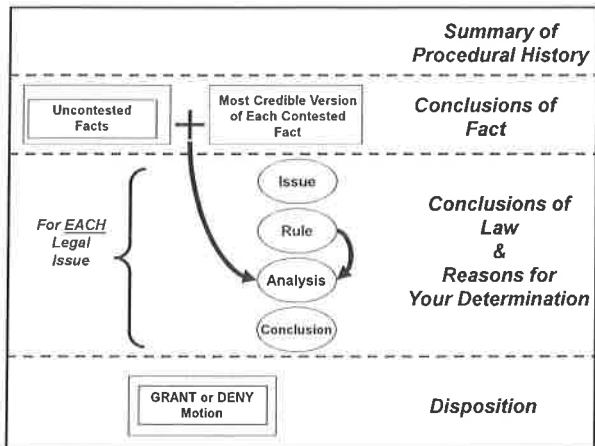
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**WRITING THE DECISION:  
CONCLUSIONS OF LAW**

Look at each legal issue separately

**I**      **Issue**  
**R**      **Rule**  
**A**      **Analysis**  
**C**      **Conclusion**

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**ISSUE**

Frame the issue:

- ❖ What **facts** and **circumstances** brought the parties to court?
- ❖ The facts suggest the issue

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**ISSUE**

*“Is a defendant entitled to relief requested where facts as you have found them?”*

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**RULE**

State the governing rule(s) of law.  
Look to:

1. Constitution
2. Statutes
3. Local ordinances
4. Rules & regulations
5. Case law



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**RULE**

Once you find the rule, make sure that you:

1. State the overarching rule
  - ❖ Best to paraphrase it if you can
  - ❖ Put it into your own words so that your opinion is consistently written in your own style

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## **RULE**

Once you find the rule, make sure that you (Con't):

2. List each element that needs to be proven

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## **ANALYSIS/APPLICATION**

How does the rule of law apply to the facts as you have determined them?



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## **ANALYSIS/APPLICATION THINGS TO CONSIDER:**

1. Which facts help prove the elements of the rule?
2. Why are certain facts relevant?
3. How do these relevant facts satisfy the rule?
4. What are the potential counterarguments and why are they inferior?

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## ANALYSIS/APPLICATION

"According to the rule of law as stated in People v. ?, the police [do / do not] have probable cause to arrest a defendant where the defendant [does XYZ]. **Because** I find that the Defendant in the instant case [did / did not do] XYZ, I conclude that the police [did / did not] have probable cause to arrest the Defendant."

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## CONCLUSION

Is the moving party entitled to the relief requested based on your analysis?



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## CONCLUSION

"Since the police [did / did not] have probable cause to arrest the Defendant, this Court concludes that the evidence [is / is not] admissible at trial."



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**WRITING THE DECISION:  
REASONS FOR YOUR DETERMINATION**

“For the reasons stated above, I find that the *moving party* (is / is not) entitled to the relief requested.”

**IT IS THEREFORE ORDERED THAT** (the defendant’s / the People’s) motion is hereby (**GRANTED / DENIED**).

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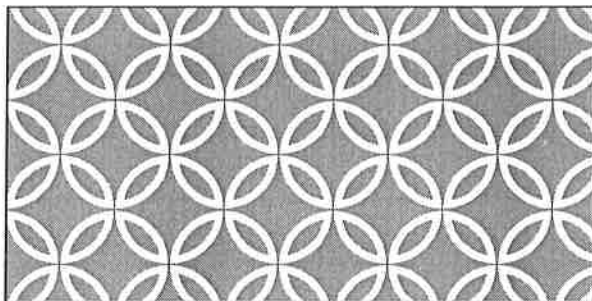
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**LEGAL RESEARCH &  
RESOURCES** | Including Citation Format

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**LEGAL RESEARCH CITES**

- ❖ Request user names and registration keys from the Office of Justice Court Support to create Westlaw and Lexis Accounts
- ❖ Log-in and tool around
- ❖ If you/judges in your area are interested in further training, please call the Office of Justice Court Support

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## LEGAL RESEARCH CITES

Westlaw Next at [www.next.westlaw.com](http://www.next.westlaw.com)

- Questions please call West helpline at (800)937-8529

Lexis Nexis at [www.lexisnexis.com](http://www.lexisnexis.com)

- Questions please call Customer Support at (800)543-6862

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WestlawNext

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## BASIC CITATION FORMATION

### **Cases:**

Case name, Volume # of Reporter, Name of Reporter, Page Number Case Begins, Page Number of Where Information is At (Court & Year)

Examples:

1. Pringle v. Wolfe, 88 N.Y.2d 426, 428 (N.Y. 1996)
2. Cantamise v. Town of Fayette, 148 A.D.2d 210, 211 (4<sup>th</sup> Dep't 1989)
3. People v. Blair, 185 Misc.2d 398, 399 (Montgomery Co. 2000)

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## BASIC CITATION FORMATION

### **Cases:**

When you find a case on Westlaw, you will often see that the case is printed in multiple reporters

Which reporter do you choose to cite to?

1. Court of Appeals cases = "N.Y." or "N.Y.2d"
2. Appellate Division cases = "A.D." or "A.D.2d"
3. All other court cases = "Misc." or "Misc. 2d."

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## BASIC CITATION FORMATION

### **Statutes:**

Title #, Name of Code, Section #

Examples:

1. N.Y. Crim. Pro. Law § 160.50
2. N.Y. Penal Law § 65.10
3. 42 U.S.C. § 1983

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