



# 2023 Annual Conference

*Syracuse, New York*

## **Opinion Writing**

Date: Monday, October 2, 2023

Instructor:

David Brockway, Esq.

MCLE: 1.0 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

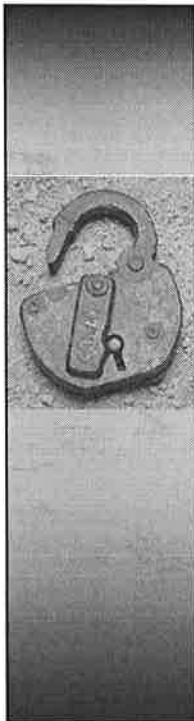


**Hon. David M. Brockway**

Village Justice, Horseheads

Hon. David M. Brockway is a 1972 cum laude honors graduate of Colgate University and graduated from Albany Law School of Union University in 1975. A former assistant public defender for Chemung County (1975-1980) and practicing attorney admitted to the courts of New York and the Northern and Western Districts of Federal Court, he currently presides as Village Justice in Horseheads (2014-present; 1980 to 2000). He retired in 2014 as a Family Court Judge (2000-2014) and as an Acting County and Supreme Court Justice. He also served as a Supervising Judge of the Town and Village Courts in the 6<sup>th</sup> District. From 2003-2007 he was an adjunct lecturer in paralegal studies at SUNY-Corning Community College. He has served the New York State Magistrates Association in numerous capacities, including as Editor of The Magistrate, Vice-President, and Director. A former “Magistrate of the Year (1988), he has also been a frequent presenter over several years, including at the Southern Tier Central (SUNY-Corning) and Southern Tier West (Houghton College) Regional Leadership Conferences. He has two grown children and five grandchildren, and was married for 42 years to the late Barbara Brockway.





# WRITE IT !

Tips on Creating Accurate and Complete Written Decisions

**Hon. David M. Brockway**  
**Village Justice, Horseheads**  
**Family Court Judge (Retired)**  
**Acting Justice of the Supreme Court (Retired)**  
**Supervising Judge, Town & Village Cts (Retired)**





- ◆ Supreme Court, Appellate Division, Fourth Department, New York.
- ◆ -----
- ◆ The PEOPLE of the State of New York, Respondent,
- ◆ v.
- ◆ Benjamin A. ADDISON, II, Defendant–Appellant.
- ◆ -----
  
- ◆ April 27, 2012

APPEARANCES

- ◆ The Legal Aid Bureau of Buffalo, Inc., Buffalo (Sherry A. Chase of Counsel), for Defendant–Appellant.
  
- ◆ Frank A. Sedita, III, District Attorney, Buffalo (Michael J. Hillery of Counsel), for Respondent.



◆ **PRESENT:** YOU, TJ.

◆ **MEMORANDUM:**

- ◆ Defendant is charged with criminal mischief in the third degree (Penal Law § 145.05 [2] ). The evidence at trial established that defendant shoveled substantial amounts of snow and large chunks of ice onto a neighbor's vehicle, causing a crack in the windshield that cost more than \$250 to repair. Although defendant does not dispute that he engaged in such conduct, he contends that the evidence is legally insufficient to establish that he intended to cause damage to the vehicle, which is a necessary element of criminal mischief in the third degree. The court rejects that contention.




- ◆ Criminal mischief in the third degree is defined in §145.05 of the Penal Law. A person is guilty of this offense “when, with intent to damage the property of another person, and having no right to do so nor any reasonable grounds to believe [so], he or she . . . [2] damages property of another person in an amount exceeding two hundred fifty dollars.”

Moreover, “A defendant may be presumed to intend the natural and probable consequences of his actions” (People v. Mahoney, 6 A.D.3d 1104, 1104, 776 N.Y.S.2d 402, lv denied 3 N.Y.3d 660, 782 N.Y.S.2d 702, 816 N.E.2d 575).



Here, the court concludes that a damaged windshield is a natural and probable consequence of heaving large chunks of ice onto a motor vehicle. Based on the credible evidence, the court holds that the People have sustained their burden of proving defendant guilty beyond a reasonable doubt, and finds the defendant guilty of the crime charged.



STATE OF NEW YORK : COUNTY OF XXXXXX  
TOWN COURT : TOWN OF XXXXXX

PEOPLE OF THE STATE OF NEW YORK

Docket No. XXXXXX

-against-  
**DECISION**

HERMAN J. JONES, Defendant

**APPEARANCES:**

John Doe, District Attorney  
Jane Doe, Assistant District Attorney  
Courthouse E. Main Street  
Barck, New York

Sue Smith, Esq.  
Attorney for Defendant  
W. Main Street  
Black, New York

**OPENING**

Upon hearing and examining the proof at a bench trial held on May 1, 2023, including the sworn testimony of Officer Sarges and witness Mabel Marpes and the received exhibits, NOW, based upon the credible evidence received, heard and deliberation thereon, the court hereby finds beyond a reasonable doubt as follows:

**FACTS**


**LAW AND DISCUSSION**

**CONCLUSION(S)**

Accordingly, the Defendant is found guilty of the violation of XXXXXX, Section 111.00 of the Vehicle and Traffic Law of the State of New York beyond a reasonable doubt. The matter is adjourned to June 1, 2023 for sentencing.

Dated: May 1, 2023

Hon. Michael XXXXX  
Justice, Town of XXXXXXXXX



## Opinion Writing Rules

- ◆ Your writing reflects on you and binds the litigants and provides guidance for future cases raising the same issues (precedence)
- ◆ Know when to write, why you are writing, your audience and when and how to publish
- ◆ Accuracy in legal research and analysis of the law and the facts
- ◆ Write clearly, precisely and concisely





## Opinion Writing Rules

- ◆ Use proper format and legal citation as provided for by New York Law Reports Style Manual (available for on the Internet at:  
[https://www.nycourts.gov/reporter/styman\\_menu.shtml](https://www.nycourts.gov/reporter/styman_menu.shtml))
- ◆ At the beginning of your opinion set out: the procedural context, the remedy sought, the issues and each party's argument as well your conclusion

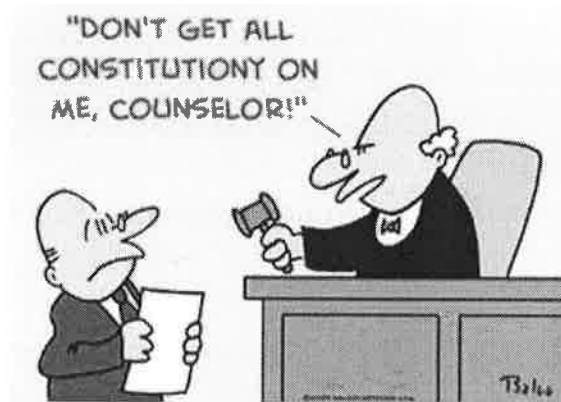


## Opinion Writing Rules

- ◆ Rewrite and edit as time allows
- ◆ Treat arguments with respect



## Things to Avoid



## Things to Avoid

- ◆ Late Decisions, Boilerplate Decisions
- ◆ Personal Attacks
- ◆ Poor type face and design
- ◆ Typos, spelling errors
- ◆ Long Sentences
- ◆ Do NOT have the parties, DAs, attorneys, etc. write it for you!!



## Organizing the Opinion



## Organizing the Opinion- Opening

Have an **Opening** section:  
a paragraph summarizing

- Action
- Parties
- Legal Issues Presented
- Conclusion



## Organizing the Opinion- Opening

**Opening Example:** “In this small claims action involving a landlord/tenant dispute, the plaintiff and landlord, Joe Smith (Smith), seeks damages in the amount of \$500.00 from tenant Jane Doe (Doe), for unpaid rent. The issue distills to whether Doe was entitled to withhold rent from Smith for his failure to make certain repairs to the premises. Based upon the evidence and applicable law, this Court concludes that Doe is liable to Smith in the amount of \$500.00.”



## Organizing the Opinion- Facts

◆ **Facts** section – use only facts that are relevant and important to the outcome of the decision– not miscellany. This will make the decision concise and easy to follow.

1. When necessary or helpful, summarize the procedural history
2. Statement of facts- may choose to order by:
  - Chronology (usually easiest for reader to follow) or
  - Legal issues or
  - Order of importance
  - How you order the facts will depend upon the type of decision, generally



## Organizing the Opinion- Facts

3. The statement of facts should recite the evidence as presented (do not embellish or exaggerate). It is also helpful to explicitly state whether you found key witness testimony credible or not (don't expect the reader to make assumptions about a finding in that regard); by doing this you will make it easier for an appellate court to affirm the decision.



## Organizing the Opinion- Facts



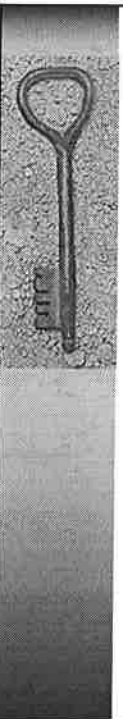


## Organizing the Opinion- Law

◆ **Law & Discussion** section: state the law, and the application of the law to the facts:

- 1. Issue- state the legal issue presented
- 2. Rule(s)- state the legal rule or rules that answer the issue
- 3. Application- apply the rule(s) to the facts (this is really the analysis section)

SO:



## Organizing the Opinion- Law

### ◆ 1. Issue

- Set forth what issue(s) are being addressed.
  - e.g.
    - L/T- Is rent owed? Is possession sought?
    - Small Claims: Was there a loss? Is there legal liability for it? What is the amount of the loss?
    - Services Rendered: Was there a warranty on the car repair?



## Organizing the Opinion- Law

**2. Rule(s)** – state the legal rule or rules that apply and that answer the issue. [Be aware of the hierarchy of legal authority, as follows]

- ◆ With respect to weight and authority to be accorded to precedent cited in your opinion: United States Constitution and United States Supreme Court are the paramount sources;
- ◆ On state level, rely on statutes directly on point;
- ◆ Then Court of Appeals cases
- ◆ Then decisions from your own Appellate Division



## Organizing the Opinion- Law

### Rules- Hierarchy- cont'd

- ◆ If there are neither C of A or your Dept's decisions, use other App Div dept cases (caveat: do so only if they don't contradict your dept on an issue);
- ◆ Then Miscellaneous (published trial ct) decisions



## Organizing the Opinion- Law

- ◆ Legal citations; avoid, when possible, citing decisional law that has not been published. Why?
- ◆ One, because your reader won't have ready access to it; and
- ◆ Two, unpublished decisions have far less precedential value.



## Organizing the Opinion- Law

- ◆ **3. Application** – apply the rule(s) to the facts (this is really the analysis section)
  - After application – may wish to provide a brief paragraph refuting or rebutting arguments raised by counsel that suggested a different outcome





## Organizing the Opinion-Conclusion

- ◆ **Conclusion** section– restatement of the result reached:

“Based upon the facts and applicable law, the Court concludes that Jane Doe is indeed liable to Joe Smith for damages in the amount of \$500.00.”



## Writing Style-General

- ◆ **When referring to you, the Court: avoid the use of “I”;** instead use the word “**the Court**” and never (unless you are on a panel of more than one judge making a decision) use the pronoun “**we**” [you’d be amazed at the number of decisions where there is only one judge and the judge refers to himself as “we” [this assumes, of course, the judge does not have multiple personalities and then it may be appropriate to use the word “we” in referring to the Court :-)].



## Writing Style

- ◆ **Referencing the parties:** (as in the example above) Jane Doe (Doe) and Joe Smith (Smith). Often most understandable to refer to parties by their names not legalistic “defendant” – “plaintiff”
- ◆ **Write in the affirmative; avoid the negative**



## Writing Style

- ◆ **Avoid words such as “never” or “always,” particularly when discussing the law.** This is so because there is almost always an exception to a rule, and to say that something is “never” or “always” certain is usually incorrect or a misstatement



## Writing Style

- ◆ **Consult the official Style Manual for rules on writing out numbers or providing them in numerals, as well as when to italicize foreign words and when not to**
- ◆ **Never cite to a case's head note as authority** (these are not part of the decision and represent only an editor's summary of what they believe is the point of law)



## Writing Style

- ◆ **Overall, when possible, write in plain, everyday English;** avoid legalese if possible, especially for small claims matters



## Resources

- ◆ **Thomson Reuters Westlaw (Provided free to Town/Village/City Courts)**
- ◆ **T/V “Resource Center”- Office of Justice Court Support:**  
**<https://www.nycourts.gov/courts/townandvillage/> (1-800-232-0630)**  
Email: [resourcecenter@nycourts.gov](mailto:resourcecenter@nycourts.gov)