



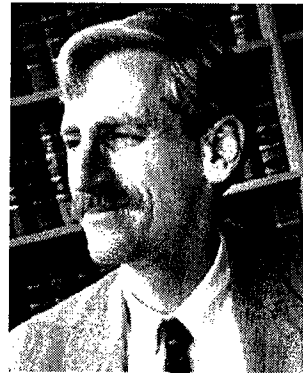
## A noteworthy omission

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By ANDREW H. BAIDA,  
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Last month, while on vacation with my wife and four teen-agers (how's that for an oxymoronic phrase) I was reprimanded by the leader of the pack after she caught me checking my e-mail when I was supposed to be on the back deck joining her for happy hour. After his mother left the room in a slightly exasperated state, my 13-year-old son, who was sitting next to me patiently waiting for his turn on the laptop, turned to me and asked, with utmost sincerity, "How do you put up with this?" As I internally formulated and ruled out several answers to his provocative but potentially dangerous question, he adamantly declared before I could muster a reply, "I'm never getting married!"

Some of you Art Linkletter types may be thinking at this point that kids sure say the darndest things, while the skeptic out there will likely be wondering whether this little vignette is the product of one of those happy hours or has even the slightest connection with the subject matter that I am supposed to address in this column. Drinking on the job may work for some, but Hemingway I'm not, nor have I ever written anything about my son without having a plausibly legitimate, albeit thinly disguised, journalistic reason for doing so, and today is no exception.



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Sam's question about how I "put up" with a woman with whom I just celebrated 20 years of marital bliss is a question I honestly hadn't thought very much about, that is, until Sam asked it, and instinct tells me that I better not give much more thought to it if I know what's good for me, but it did get my attention. Getting attention is precisely what you need to do when filing a petition for certiorari that asks the Maryland Court of Appeals to review your case.

I am not suggesting that your petition should ask the judges probing questions about their personal lives, but there is definite value in being direct, putting it out there,

and making the reader think about basic points that might otherwise be taken for granted and not even considered until the subject is raised.

The Maryland Rules, as I recently pointed out, offer little guidance on how to do this, but the upside is that they also impose few restrictions on the manner in which you can reach for the gold.

Perhaps most noteworthy about Rule 8-303(b)(1), which sets forth a short list of items that must be included in the petition, is that it does not contain any requirement that a petition shall begin, as a brief does, with a Statement of the Case.

As hard as I've tried over the years to jazz up this portion of the brief, there is only so much advocacy that can be accomplished in what is basically a description of the procedural posture of the case. Being liberated from such a requirement in the cert petition might not rise to everyone's level of "Free at last, free at last — Thank God Almighty, I'm free at last!" But it does for me, and not just because, as some who know me have said with a certain degree of accuracy, I need a life. Rule 8-303's omission of the requirement for a Statement of the Case unshackles the advocate and enables you from the moment you begin writing the petition to set forth the reasons why the world will end if the Court of Appeals does not issue a writ of cert in your case.

Now, I know that some of you must be thinking that there is no way to appeal to the Court's exercise of its discretion while complying with certain preliminary requirements in Rule 8-303(b)(1) that are listed, such as Rule 8-303(b)(1)(D), which provides that the petition shall include "[a] statement whether the judgment of the circuit court has adjudicated all claims in the action in their entirety, and the rights and liabilities of all parties to the action." And if you would be one of these thinkers, you would be right. But there is no requirement about where information such as this must be included in the petition.

That place should be in a footnote, which I do not say lightly because nine out of 10 footnotes are bottom feeders that serve no useful purpose, annoy rather than help the reader, and are just plain evil, but on rare occasions their existence is justified and this is one of them.

As illustrated in the following excerpt from a petition that I filed in a case discussed in last month's column, putting technical information required by the Rules in a footnote enables you to use as much of the text as possible in your effort to persuade the reader why cert should be granted:

The Maryland Aviation Administration respectfully petitions this Court for a writ of certiorari to review the February 4, 2003 decision of the Court of Special Appeals in *Maryland Aviation Administration v. Noland*, September Term, 2001, No. 2161 (unreported) (mandate issued March 6, 2003) (Ex. A), which reversed an administrative agency's decision upholding the State's employment termination of a paramedic who admitted that he twice struck in the face, with a closed fist, a restrained and handcuffed psychiatric patient after the patient spit toward the employee. Review is warranted because this case presents important questions concerning the appropriate standard of judicial review that applies to an administratively-imposed employment sanction.

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The decision of the Circuit Court for Anne Arundel County, and the docket entries evidencing the court's decision and judgment, are attached as Exs. B and C. The circuit court's judgment adjudicated all claims in their entirety and the rights and liabilities of all parties.

As this example also shows, there is no requirement about when this information is to be provided, so don't lay it out at the very beginning of the petition. To hook the big fish, you need to get its attention first. Wait until after you have done so by giving the court a basic preview in the first paragraph of the reasons why your case is important, before you get to the actual question presented.

And when you do get there, make sure that you know the right answer. Because if you don't and that question remotely resembles the one I was asked last month, you can be in a lot of trouble.

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