

**Volume: 5 Number: 695\_law**

October 13, 2006

Sparky's list

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*Special to The Daily Record*

Today's discussion, which is a continuation of last month's column about thoughts to consider when composing and/or editing your brief, has been inspired by a beloved family member, as have other articles which have appeared in this column over the last few years. But unlike those articles, the impetus for today's discussion is the least understood member of my family. And, as anyone who has read this column in the past will tell you, that's saying a lot.

Okay, maybe you can understand how my wife of 21-plus years could introduce me as her "friend" when we recently bumped into some guy she apparently dated in college, but I'm still trying to figure out what that was all about. So is the private investigator I hired, but that ball of confusion pales in comparison when it comes to understanding the one family member who, until now, I've managed not to mention in this column.

I'm talking about my dog, Sparky, who some people — actually, it's quite a few — just don't understand. Such as my sister, whose pants he accidentally tore when she startled him by walking across the kitchen while she was visiting for Thanksgiving a couple of years ago (she hasn't been back since). Or that guy to whom I gave twenty bucks, as compensation for his supposedly new Dockers, after he provoked what I thought was a perfectly understandable reaction from Sparky when the man invaded the poor dog's personal space in front of the local ice cream store a few years back (haven't been there in a while either). And then there was that time when my brother-in-law — oh, never mind.

If you were to ask my son, he'd tell you that Sparky is awesome and the best dog in the whole world. But Sparky also has some anxiety issues, like a lot of people, including the ones on the receiving end of his love bites. Had they known about Sparky's anxiety and, perhaps more important, that he was abused as a puppy by a repressed congressman with a drinking problem, I am sure that my sister, her husband, and the Dockers guy would have had an entirely different reaction and that they would have been much more understanding when they had their close encounters of the Sparky kind.

### **Statement of the case**

Which brings me to today's discussion about checklist items that Sparky, if he were a lawyer, would suggest that you consider when writing and/or editing that portion of the brief where you make your very first impression, i.e., the statement of the case.

Sparky would be among the first to tell you that first impressions can really count, but sometimes he can get a little too literal in making an impression, if you know what I mean, so here are some suggestions on how to create an impression in your brief that is not just lasting but positive:

Sparky's checklist item #1 (my checklist item #4): Be succinct. You will likely not make a good impression but rather will risk doing the opposite by writing a multi-paragraph description of what your case is about. Judges have a lot to read and should not have to muddle through the beginning of your brief trying to figure out everything themselves. Maryland Rule 8-504(a)(2) calls for a "brief" statement of the case that describes "the nature of the case, the course of the proceedings, and the disposition in the lower court," so create a positive impression by describing your case as succinctly as possible, preferably in one paragraph, or two at the most. You'll have plenty of time later in the brief to get into the fascinating details of your case, but there's no need to share that information at the beginning where you introduce the judges to your appeal.

Sparky's checklist item #2 (my #5): Be focused. Make sure that you let the judges know as early as possible what the heart of the case is, from your biased but fair perspective. There's no argument in this section of the brief, but there should be advocacy. For example, the very first sentence in one brief that I wrote described the case as an appeal from a trial court decision finding that a government agency responsible for protecting the environment committed fraud. My goal was to start off with information designed to furrow the reader's brow. Think of a way to describe your case in words that are meant to elicit a favorable reaction to your position. The statement of the case provides the context for understanding the significance and relevance of everything that follows in the brief, and everything that follows is governed by the one overriding goal of persuading the reader. So be focused on that goal in establishing the context for the rest of the brief.

Sparky's checklist item #3 (my #6): Be complete.

Virtually every brief should contain a statement of the case. In contrast to Maryland Rule 8-504(a)(4), which states that "the appellee's brief shall contain a statement of only those additional facts necessary to correct or to amplify the statement in the appellant's brief," Maryland Rule 8-504(a)(2) gives the brief writer considerably more latitude by providing that "the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief."

I don't know about you, but I don't think I've ever agreed with anything that any of my opponents have said, in the statement of the case or anywhere else. In most cases, your opponent's brief will not characterize the nature of the case in a manner that is favorable to your client. Nor, in most cases, will your opponent describe the course of the proceedings, or the disposition of the case in the lower court, to your client's advantage, at least not as well as you can. So, unless your case is one in which no amount of advocacy can be used in the statement of the case, write your own statement because your opponent is definitely not going to be an advocate for your client.

Not even if your client is awesome and the best dog in the whole world.

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