

P.S. DECISION WRITING MANIFESTO

Disclaimer: There are no absolutes and everything on this page probably has an exception (or several). Additionally, this was hastily written the night before our meeting, so it should not be seen as an example of good/organized writing.

I. GUIDELINES FOR PS DECISION WRITING

- Avoid using contractions
- Distinguish between testimony and argument
 - Testimony is a party or witness asserting a fact or something they want the panel to find as a fact.
 - “The Respondent testified that he did not provide the lock box code to his client.”
 - Verbs: testified, stated, explained, noted, recounted
 - Argument is a party or counsel asserting how the facts relate to the code or the law (or some other requirement).
 - The Respondent contends that Article 3 was not violated because the homeowner consented to his clients accessing the home without their REALTOR.”
 - Verbs: argued, contends, asserts, “the Respondent’s position is...”
- Identify the facts which are undisputed and which ones are disputed.
 - If there is a dispute regarding a *material* fact, the decision must resolve it (even if that means saying “we do not know, but the Complainant did not meet her burden of proof to convince us of her account”).
- If you highlight an argument or issue in the fact section, the decision needs to explain how the panel decided that issue.
 - *See example in Dkt 22-27.*

II. DETERMINING WHAT FACTS/TESTIMONY TO INCLUDE IN THE DECISION

- Decisions are not transcripts and not all evidence, testimony or arguments are worth the ink it would take to print them.
- The goal is to identify the “material” facts necessary to support the panel’s findings and conclusions.
- Here are the general pillars I use to determine if something should be included:
 - **Is the evidence or testimony:**
 1. **The basis for any finding of fact or conclusion the panel is making?** (Any finding/conclusion should be tied to evidence recounted above)
 2. **Contrary to a finding of fact or conclusion the panel is making?** In other words, if a party testified that the sky is orange, but the panel finds that it is blue, I would include the orange testimony. This shows the parties (and the board) that the panel did hear the testimony, it just did not agree.
 3. **Necessary for context or background.** While a fact might not be entirely *necessary* for a finding, you are ultimately telling a story and some context is always useful, if not necessary. Sometimes this context is also important as rationale for a sanction.
 4. **Something one or more of the parties *really* felt is critical (even if the panel did not think it was remotely relevant at all).** One party is always upset with a decision and if they spent a ton of time talking about something, then they lose and that issue is not addressed, they may feel like it was ignored and they did not get a fair hearing. Sometimes it is worth noting it and, in certain cases, explaining why it does not matter to the decision.
 - a. *For example, see Footnote 1 in Dkt 22-42.*

III. ORGANIZATION

- **General format**¹
 - **Facts**
 - Recount the testimony/evidence/arguments
 - Generally, resolve factual disputes (though sometimes this makes more sense under the Application section)
 - **Rule**
 - Explain the relevant Article being examined.
 - Include any relevant SoP or universally applied position we have on that Article.
 - **Application/Analysis**
 - Apply the facts to the Rule.
 - Think of the Facts Section and the Rule Proof like you are laying out all the pieces to the puzzle. This is where you put the puzzle together.
 - It should ultimately lead to a conclusion
 - **Conclusion**
 - “Therefore, Respondent did violate Article 15 because...”
 - In really simple decisions, this can even just be the actual “Conclusion” section of the decision.
 - See, e.g., Dkts 22-22-52 & 22-61.
- **Repeat as Necessary**
 - Often, there are multiple issues or Articles and it makes sense to create separate sections to discuss and apply that article separately.

Sample Format:

Facts
Art. 1
Rule
Application
Conclusion
Art. 2
Rule
Application
Conclusion

An example of this occurs in Dkt 22-27

¹ This organization method is loosely based on “IRAC” writing method if you want to google it for a better explanation)

- Other times, there will be multiple sets of conduct that fall under the same Article. In that case, you can repeat the Application and Conclusion sections, but you do not need to repeat the Rule Proof:

Facts

Rule Proof (applies to both alleged violations)

Application of Violation 1

Conclusion of Violation 1

Application of Violation 2

Conclusion of Violation 2

An example of this occurs in Dkt 22-48 (Under Art. 12 on pages 3-4)