ASFLAD: A STRUCTURE FOR JUDICIAL DECISION WRITING

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Judicial decision writing differs in important ways from other forms of legal writing, particularly from the kind of persuasive writing used in legal briefs and memoranda. Although all forms of legal writing rely on legal reasoning and analysis, a judicial decision must cogently explain what the law is, rather than arguing what it ought to be. Appropriately, in view of the larger number of students who will become legal advocates, law school writing education focuses more heavily on persuasive writing for advocacy. As a result, most attorneys have been taught one of three methods of structuring legal writing: IRAC (Issue, Rule, Application, Conclusion), CREAC (Conclusion, Rule, Explanation, Application, Conclusion), or CRAC

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(Conclusion, Rule, Analysis, Conclusion). These structures are designed for persuasive writing and therefore focus on argument, leaving out important elements of an appellate judicial decision. In this article, we set out a writing structure for such decisions, abbreviated as ASFLAD.

ASFLAD stands for Argument, Standard of Review, Facts, Law, Analysis, and Disposition. This structure is intended to be applied to the discussion of individual legal issues within the broader context of an appellate decision. Such decisions generally include an introduction, a section setting forth the facts and procedural background of the case as a whole, sections discussing the various legal issues raised by the parties, and a final disposition of the case.

I. ARGUMENT

In addressing a legal issue in an appeal, the writer should begin by stating the appellant's argument on that issue. In some instances, this is best accomplished by quoting the party's argument, at least in part.[1] Quoting is particularly effective if the appellant's brief clearly and succinctly sets forth its argument.

At times, however, paraphrasing the party's argument will be preferable. Paraphrasing is particularly helpful when the writer has a clear understanding of what the party is arguing, but the party has stated the argument poorly. At times, a writer may also need to paraphrase when a party has not made a clear argument. In that circumstance, paraphrasing allows the writer to couch the argument in such a way that it can be addressed, often by stating the party's claim and then explaining the manner in which the decision will view the argument, "to the extent" the writer understands it.[2] A writer may also give a party

1. *See, e.g.*, State v. Bergin, 541 P.3d 587, 592 (Ariz. Ct. App. 2023).

2. *See, e.g.*, Dawson v. Withycombe, 163 P.3d 1034, 1055–56 (Ariz. Ct. App. 2007) (paraphrasing briefly points made by party and summarizing writer's understanding of argument); State v. Delgado, 303 P.3d 76, 81 (Ariz. Ct. App.

the benefit of the doubt in couching a poorly made argument as one that is cognizable by indicating that "insofar" as the party argues that point, it is either correct or incorrect.[3] Additionally, some writers may choose to avoid quotations entirely, preferring to write exclusively in the court's voice rather than the advocate's.

Whether quoted or paraphrased, the statement of the party's argument at the outset of the discussion should broadly state the party's position. To the extent the decision needs to address more refined points of the party's argument, the writer should do so later in the Analysis portion of the discussion, either by applying the law to the facts or by addressing sub-issues. By way of illustration, in *State v. Ramos*, the court initially set forth a statement of the defendant's argument on a motion to continue, broadly explaining that he claimed the denial had deprived him of his right to counsel.[4] The court later addressed more specific arguments, which largely attempted to analogize his circumstances to those in other cases, by quoting parts of the defendant's arguments and explaining why the cases on which he relied were distinguishable.[5]

II. STANDARD OF REVIEW

After presenting a broad statement of the party's argument on an issue, the writer should state the court's standard of review. The standard of review is the lens through which a court views the case, and may at times

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2013) (combining quotes from party's brief and paraphrased summary to clarify and address argument).

3. State v. Johnson, 447 P.3d 783, 813 (Ariz. 2019) ("Insofar as Johnson argues he should have been allowed to ask permissible case-specific questions, he ignores that the court granted him the opportunity to ask such questions when appropriate." (citing State v. Garcia, 226 P.3d 370, 377–78 (Ariz. 2010) (en banc))).

4. State v. Ramos, 372 P.3d 1025, 1029 (Ariz. Ct. App. 2016).

5. *Id.* at 1030–31 (citations omitted).

determine the outcome of the appeal.[6] For that reason, no judicial decision should fail to clarify the nature of the review being undertaken.

Broadly speaking, a reviewing court will apply one of two general standards of review. The first is review for an abuse of discretion. This is a deferential standard of review, most often applied to factual findings and evidentiary rulings.[7] Under this standard, the court will only reverse the ruling of the lower court if it is clearly erroneous or lacks evidentiary support.[8] An abuse of discretion can also encompass a mistake of law.[9]

The second commonly employed standard is de novo review. This standard is generally applied to legal issues.[10] This includes issues such as the interpretation of rules and statutes,[11] rulings on motions for summary

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6. *See, e.g.*, Comm. for Just. & Fairness v. Ariz. Sec'y of State's Off., 332 P.3d 94 (Ariz. Ct. App. 2014); Purvis v. Hartford Accident & Indem. Co., 877 P.2d 827 (Ariz. Ct. App. 1994).

7. *See* Brionna v. Dep't of Child Safety, 533 P.3d 202, 209–10 (Ariz. 2023) ("Failing to agree with the juvenile court's factual findings, however, is not the appropriate standard."); *see also* State v. Colorado, 535 P.3d 941, 946–47 (Ariz. Ct. App. 2023) (citing State v. Smith, 893 P.2d 764, 766 (Ariz. Ct. App. 1995)); State v. Gonzalez-Gutierrez, 927 P.2d 776, 778 (Ariz. 1996) (en banc); State v. Williams, 99 P.3d 43, 46 (Ariz. Ct. App. 2004) (discussing deference to trial court's credibility findings); State v. Payne, 314 P.3d 1239, 1258 (Ariz. 2013) (citing State v. Robinson, 796 P.2d 853, 858 (1990)) (reviewing admission of evidence for abuse of discretion).

8. *See* Shinn v. Ariz. Bd. of Exec. Clemency, 521 P.3d 997, 1001 (Ariz. 2022) (court abuses discretion if "order unsupported by the record" (citing Boyle v. Boyle, 290 P.3d 456, 458 (Ariz. Ct. App. 2012))); *see also* Williams v. Williams, 801 P.2d 495, 500 (Ariz. Ct. App. 1990) (defining an abuse of discretion as a ruling that "is manifestly unreasonable, exercised on untenable grounds or for untenable reasons" (first citing Quigley v. City Ct. of Tucson, 643 P.2d 738, 740 (Ariz. Ct. App. 1982); and then Torres v. N. Am. Van Lines, Inc., 658 P.2d 835, 840 (Ariz. Ct. App. 1982))).

9. *See* State v. Havatone, 389 P.3d 1251, 1254 (Ariz. 2017) (explaining in the context of a motion to suppress that a court abuses its discretion by making an error of law (first citing State v. Butler, 302 P.3d 609, 612 (Ariz. 2013) (en banc); and then State v. Bernstein, 349 P.3d 200, 202 (Ariz. 2015))).

10. *See* Shifflette v. Marner, 534 P.3d 101, 103 (Ariz. Ct. App. 2023) (quoting Sierra Tucson, Inc. v. Lee, 282 P.3d 1275, 1277 (Ariz. Ct. App. 2012)).

11. *See, e.g.*, State v. Hansen, 160 P.3d 166, 168 (Ariz. 2007) (en banc) (first citing Pima Cnty. v. Pima Cnty. L. Enf't Merit Sys. Council, 119 P.3d 1027, 1030 (Ariz. 2005) (en banc); and then Duncan v. Scottsdale Med. Imaging, Ltd., 70 P.3d 435, 437 (Ariz. 2003) (en banc)).

judgment,[12] and the interpretation of contract terms.[13] Under this standard, the reviewing court considers the legal issue presented as if for the first time, without deference to the lower court's decision.[14]

III. FACTS

An appellate decision will generally include a separate section of facts and procedural history relevant to the case as a whole, beginning with a statement of the standard of review for those facts,[15] but additional statements of fact will be required in addressing individual issues. In laying out the relevant facts for each issue, a writer will generally start a new paragraph within the discussion. How extensively the writer discusses the relevant facts here will vary. Sometimes the writer will have stated the majority of the facts of the case in the statement of factual and procedural background.[16] At other times, particularly in a multi-issue decision, that background section will be quite cursory, and the writer will include most of the facts within the discussion of the legal issues.[17] Either way, the decision needs to include sufficient facts within the discussion of the issue to give context to the party's

12. Beck v. Neville, 540 P.3d 906, 910 (Ariz. 2024) (quoting Dabush v. Seacret Direct LLC, 478 P.3d 695, 698 (Ariz. 2021)).

13. Grosvenor Holdings, L.C. v. Figueroa, 218 P.3d 1045, 1050 (Ariz. Ct. App. 2009) (citing Rand v. Porsche Fin. Servs., 167 P.3d 111, 121 (Ariz. Ct. App. 2007)).

14. *See* State v. Arevalo, 470 P.3d 644, 655 (Ariz. 2020) (Bolick, J., concurring) (citing dictionary definitions of "de novo" to explain such review is made "anew," without any reliance on past interpretations or decisions (first citing *De Novo*, BLACK'S LAW DICTIONARY (11th ed. 2019); and then *Anew*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (3d ed. 2002))).

15. *See, e.g.*, Windhurst v. Ariz. Dep't of Corrs., 536 P.3d 764, 769 (Ariz. 2023) ("We review the entry of summary judgment de novo, viewing the facts in the light most favorable to Windhurst as the nonmoving party." (citing S. Point Energy Ctr. LLC v. Ariz. Dep't of Revenue, 508 P.3d 246, 249 (Ariz. 2022))); *see also* State v. Robinson, 509 P.3d 1023, 1029 n.1 (Ariz. 2022) ("We review the facts in the light most favorable to sustaining the jury's verdict." (citing State v. Smith, 475 P.3d 558, 567 (Ariz. 2020))).

16. *See, e.g.*, State v. Bergin, 541 P.3d 587, 590–91 (Ariz. Ct. App. 2023).

17. *See, e.g.*, State v. MacHardy, 521 P.3d 613, 617–20 (Ariz. Ct. App. 2022).

argument and the law related to it. When the decision includes a more detailed statement of facts in the background section, this may be as little as stating the statute under which a defendant was sentenced.[18] In contrast, a multi-issue decision may require a writer to include facts about disparate parts of the trial court proceedings, such as voir dire or testimony by a particular witness, in separate discussion sections in order to address a claim raised thereon.[19]

IV. LAW

Having provided the facts of the case that are relevant to the issue being discussed, the writer will generally start a new paragraph stating the general principles of law on the issue. For example, if the issue is a question of the admission of relevant evidence in an Arizona court, the writer would include Arizona Rule of Evidence 401. The writer should consider case law, rules, and statutes that deal with the issue and concisely set forth the legal principles therein. This will generally involve stating the legal rules applicable to the issue, defining terms used in those rules, and outlining the history or context of the rules as necessary.[20]

V. ANALYSIS

This is arguably the most important part of the discussion—applying the law to the facts. Returning to

18. *See, e.g.*, Shifflette v. Marner, 534 P.3d 101, 103 (Ariz. Ct. App. 2023).

19. *See, e.g.*, State v. Bush, 423 P.3d 370, 377–78 (Ariz. 2018).

20. *See, e.g.*, State v. Togar, 462 P.3d 1072, 1078 (Ariz. Ct. App. 2020) ("[T]he evidence in question . . . is analyzed . . . for its relevancy under Rule 401, Ariz[ona] R[ules of] Evid[ence]"); *see also* Flynn v. Flynn, 543 P.3d 269, 272–73 (Ariz. Ct. App. 2024) (setting forth Arizona statutes and rules as to the procedures, standards, and consequences of orders of protection in order to address party's claim of error in issuing "Notice of Brady Indicator"); Higuera v. Lee, 383 P.3d 1150, 1152–56 (Ariz. Ct. App. 2016) (addressing claim related to motion for change of judge by discussing older cases on which party relied and rules in effect at the time of those decisions to reach the conclusion that past cases did not apply based on the language of the current rule).

our relevance example, the writer would explain why and how the evidence at issue did or did not make a material fact more likely. In so doing, legal authority may be used to define a term,[21] to give context to a rule and how it relates to the relevant facts,[22] to illustrate how a rule has been applied in the past,[23] or to distinguish or analogize past applications of the rule to the facts at issue.[24] Analysis should not simply be a "conclusion" dressed up as analysis—the writer should explain how the relevant legal principles stated in the "Law" section relate to the facts of the case, employing legal reasoning and principles of logic to do so. Often this will mean adding additional citation to legal authority to address finer points and additional statements of argument by the parties.

As suggested, a party often makes a broad argument supported by more refined arguments on the same point. When that is the case, the writer will address sub-arguments here. For example, if a defendant argued the trial court erred in denying a motion to suppress evidence, he or she might argue that the evidence should have been suppressed for several reasons: lack of reasonable suspicion to make a stop, improperly extending the stop, and coerced consent. In that case, the

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21. *See, e.g.*, State v. Cisneros, 534 P.3d 932, 935 (Ariz. Ct. App. 2023) (citing construction of term "relating to" in past decision by Arizona Supreme Court (quoting Saban Rent-a-Car LLC v. Ariz. Dep't of Revenue, 434 P.3d 1168, 1174 (Ariz. 2019))).

22. *See, e.g.*, State v. Bryson, 541 P.3d 582, 586 (Ariz. Ct. App. 2023) (describing content of other subsection of statute as limiting focus of statute to support interpretation of first subsection as so limited (quoting State v. Mohajerin, 244 P.3d 107, 111 (Ariz. Ct. App. 2010))); *see also* Ruesga v. Kindred Nursing Ctrs., L.L.C., 161 P.3d 1253, 1262 (Ariz. Ct. App. 2007) (quoting decisions on spouse's authority to act as agent to explain how evidence supported claim that spouse in case at bar had been authorized as agent (citations omitted)).

23. Doherty v. Leon, 472 P.3d 531, 536 (Ariz. Ct. App. 2020) (citing conclusions from courts of other states with statutes "consistent with" Arizona statute as supporting reasoning of decision (citations omitted)).

24. *See, e.g.*, *Flynn*, 543 P.3d at 274–75 (distinguishing factual circumstances of cases on which party relied to support result in case at bar (first citing Mahar v. Acuna, 287 P.3d 824 (Ariz. Ct. App. 2012); and then Savord v. Morton, 330 P.3d 101 (Ariz. Ct. App. 2014)).

analysis section will have a few different "LAD" sections within the "A" of the larger ASFLAD. The decision will state the party's refined argument, give specific law related to it as necessary, and give a disposition of that argument. Then the writer will move to the next argument.

In addressing sub-arguments, a writer may structure the discussion in one of two different ways, depending on the law in the area. First, the discussion can be structured with one statement of "Law," followed by multiple sections of "Analysis."[25] This is useful when the same broad concepts of law apply to all of the sub-arguments. The overall ASFLAD structure will then look like this:

- A (broad argument)
- S (standard of review)
- F (facts relating to the issue as a whole)
- L (law on issue broadly)
- A (refined argument)
- A (analysis of sub-argument, employing the law stated on the issue broadly)
- D (disposition)
- A (next sub-argument)
- A (analysis of that sub-argument)
- D (disposition of sub-argument)

Repeat until all sub-arguments have been addressed.

Second, the discussion can be structured with multiple statements of "Law."[26] This is best done when an issue involves legal authority that applies to the broad argument, but also distinct legal authority that relates specifically to each sub-argument. The overall ASFLAD structure will then look like this:

25. *See, e.g.*, State v. Rios, 528 P.3d 479, 485–87 (Ariz. Ct. App. 2023), *cert. denied*, 144 S. Ct. 1077 (2024) (mem.).

26. *See, e.g.*, State v. Stutler, 402 P.3d 1013, 1015–16 (Ariz. Ct. App. 2017).

- A (broad argument)
- S (standard of review)
- F (facts relating to the issue as a whole)
- L (law on issue broadly)
- A (refined argument)
- L (law on specific sub-argument)
- A (analysis of sub-argument)
- D (disposition of sub-argument)

Repeat until all sub-arguments have been addressed.

VI. DISPOSITION

Rather than the "conclusion" section commonly called for in an argumentative legal brief, which is intended to explain why a party's position is correct, a judicial decision will end with a clear determination of the legal question. The phrasing of this statement will be determined in part by the standard of review employed by the court. When addressing an issue de novo, the disposition will be a direct statement of the law as applied.[27] When reviewing for an abuse of discretion, the statement will be couched in terms of whether the trial court abused its discretion in its ruling.[28]

The writer must also consider the procedural mechanism by which the issue came before the reviewing court, *e.g.*, by motion, by objection at trial, or in a post-conviction proceeding. For example, if the decision is addressing whether the prohibition against double jeopardy applies, the writer might state that the defendant's "convictions for both of those offenses . . . do

27. *See, e.g.*, Dominguez v. Metcalf in & for Cnty. of Pima, 531 P.3d 372, 374 (Ariz. Ct. App. 2023) ("Because Rule 7.2(c)(1)(A) does not require a superior court to revoke the release of a defendant found guilty except insane, we accept special action jurisdiction and grant relief.").

28. *See, e.g.*, State v. Sallard, 451 P.3d 820, 825 (Ariz. Ct. App. 2019) ("Accordingly, the court did not abuse its discretion in denying Sallard's motion to suppress." (citing State v. Cornman, 351 P.3d 357, 361 (Ariz. Ct. App. 2015))).

not violate the prohibition against double jeopardy."[29] In all circumstances, the disposition should be direct and clear.[30]

To demonstrate how the ASFLAD structure can be applied in practice, here is a very short example, with each section labeled.

Jones argues the trial court improperly instructed the jury on the first-degree burglary charge because it did not sufficiently explain the meaning of the statutory phrase "in the course of committing any theft," particularly as it applied to weapons taken during the burglary. A.R.S. § 13-1508(A).	**Argument**
"[W]e review de novo a claim that a jury instruction misstates the law." *State v. Moody*, 208 Ariz. 424, ¶ 189 (2004).	**Standard of Review**
After he entered the victim's home, Jones took three handguns, a shotgun, and three scopes, and was captured on video leaving the property with the guns by a side gate.	**Facts**
In *State v. Tabor,* 184 Ariz. 119, 120 (App. 1995), this court ruled that, by amending the statute in 1988, the legislature had intended to overrule previous caselaw and that weapons taken during a crime support a conviction for first-degree burglary.	**Law**
As in *Tabor*, although the evidence did not show that Jones possessed a weapon when he initially entered the victim's residence or used one offensively while committing his crimes, his possession of the firearms as "loot" supports the jury instruction in question and his conviction for first-degree burglary.	**Application**
The trial court therefore did not err in instructing the jury.	**Disposition**

Taken together, the various sections of the ASFLAD structure work to create a good reading flow, as well as clear and direct discussions of the legal issues being addressed in a judicial decision. Although a legal issue

29. State v. Carter, 429 P.3d 1176, 1189 (Ariz. Ct. App. 2018), *aff'd*, 469 P.3d 449 (Ariz. 2020).

30. *See, e.g.*, Shifflette v. Marner, 534 P.3d at 104 (Ariz. Ct. App. 2023) ("For these reasons, the respondent judge erred by suspending the imposition of sentence and placing Shifflette on probation, and by ordering her to serve [section] 28-1381(K)'s required jail term as a probation condition.").

presented for review may at times be too complex to be easily fit into any writing structure, and slavish adherence to any writing structure can be problematic, we think the ASFLAD structure will help court personnel in drafting legal decisions in many cases. It is sufficiently similar to other legal writing structures to be familiar to most attorneys, but takes into account the unique position that appellate courts hold in our system and the need for a distinct writing style in that context.