

References and Suggested Reading

http://cdn.ca9.uscourts.gov/datastore/uploads/guides/stand_of_review/I_Definitions.html (Ninth Circuit article on standards of review)

www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/Standards-of-Review.pdf (Georgetown Law article on the same topic)

Law Review articles on using quotations, analogies and metaphors:

- Jacob Carpenter, PERSUADING WITH PRECEDENT: UNDERSTANDING AND IMPROVING ANALOGIES IN LEGAL ARGUMENT, 44 *Capital Univ. L. Rev.* 461 (2016).
- Michael Smith, LEVELS OF METAPHOR IN PERSUASIVE LEGAL WRITING, 58 *Mercer L. Rev.* 919 (2007).
- Robert Peterson, THE BARD AND THE BENCH: AN OPINION AND BRIEF WRITER’S GUIDE TO SHAKESPEARE, 39 *Santa Clara L. Rev.* 789 (1999).

Regarding *Erie*:

- *Shady Grove Orthopedic Assoc. v. Allstate Ins. Co.*, 599 U.S. 393 (2010). Note in particular, Justice Ginsburg’s dissent in this 5-4 judgment, 4-1-4- plurality decision, which gives a good history of the *Erie* doctrine. The fact that the Court split 5-4 regarding the proper interplay of *Erie* and F.R.C.P. 23, as follows, shows that this issue is a genuine legal “sticky wicket” of the non-political variety: Scalia, Sotomayor, Thomas, Stevens, Roberts – Ginsberg, Alito, Kennedy, Breyer.
- *Makaeff v. Trump University, LLC*, 736 F.3d 1180 (9th Cir. 2013). Order denying en banc review. The concurrence and the dissent from the denial showcase the on-going disagreement within the Ninth Circuit regarding the interaction of the Federal Rules of Civil Procedure with the *Erie* Doctrine.
- Jay Tidmarsh – PROCEDURE, SUBSTANCE, AND *ERIE*, 64 *Vand. L. Rev.* 877 (2011). This article tries to sort out, post-*Shady Grove*, what is procedural and what is substantive for purposes of the interplay between *Erie* and the Federal Rules of Civil Procedure.
- Edward K. Cheng – *ERIE AND THE RULES OF EVIDENCE*, 65 *Vand. L. Rev.* 231 (2012) – this article does the same for the interplay between *Erie* and the Federal Rules of Evidence, and the knotty *Erie* problems caused, for example, by application of the federal *Daubert* rule to expert testimony in a diversity case. This is a very Montana-specific topic because the Montana Supreme Court does not follow *Daubert*. See, e.g., *McClue v. Safeco Ins. Co. of Illinois*, 354 P.3d 604, 609 (Mont. 2015) (“[i]n contrast to its status in the federal system, *Daubert* is not generally applicable in Montana”).

- Allen Mendenhall, the Diversity Chart (referred to on the slide entitled **BUT DIVERSITY IS COMPLICATED**), please see – https://allenmendenhall.files.wordpress.com/2012/01/erie_flow_chart.pdf.

Mary Beth Beazley, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* (Aspen 2010).

Carole C. Berry, *EFFECTIVE APPELLATE ADVOCACY: BRIEF WRITING AND ORAL ARGUMENT* (West 2009).

Michael R. Fontham et al., *PERSUASIVE WRITTEN AND ORAL ADVOCACY IN TRIAL AND APPELLATE COURTS* (Wolters Kluwer 2007).

Alan D. Hornstein, *APPELLATE ADVOCACY IN A NUTSHELL* (West 1998).

Lawrence D. Rosenberg Partner, Jones Day, *Writing to Win: the Art and Science of Compelling Written Advocacy*, Washington, DC (2014).

Ruth Anne Robbins, *PAINTING WITH PRINT: INCORPORATING CONCEPTS OF TYPOGRAPHIC AND LAYOUT DESIGN INTO THE TEXT OF LEGAL WRITING DOCUMENTS*, *Journal of the Association of Legal Writing Directors* (2004).