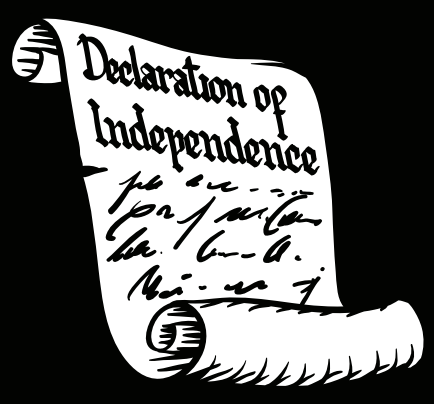


10 Golden Roman Drafting Rules, Which may Help You to Draft Excellent Writ Petition

BY DR NEEL MANI TRIPATHI
PHD AND POST DOC IN LAW

Rule 1

(LEX SUPREMA)



THOROUGH UNDERSTANDING OF CONSTITUTIONAL PROVISIONS

A deep understanding of jus constitutionale (constitutional law) is critical. Advocates should focus on the doctrine of lex suprema lex (the supreme law of the land), particularly Articles 32 and 226 of the Constitution. By interpreting these provisions with ratio legis (the reason for the law), you can argue a fortiori (with stronger reason) why the court should intervene.

Rule 2

(STARE DECISIS)



DETAILED CASE LAW RESEARCH

The principle of stare decisis (to stand by things decided) is crucial in writ petitions. Advocates must carefully research and present precedents (praejudicium) to persuade the court. Referencing earlier decisions, especially those that are in pari materia (on the same subject matter), strengthens the argument by showing res judicata (a matter already judged) or ratio decidendi (the reason for the decision).

Rule 3
(LIS PENDENS)

FRAMING ISSUES PRECISELY

The petition must present the lis (dispute) in clear terms to help the court address quaestiones juris (questions of law) effectively. The framing of quaestiones facti (questions of fact) alongside the legal questions should guide the court's inquiry and decision-making process.

Rule 4

(JUS NATURALE)



EMPHASIZING FUNDAMENTAL RIGHTS VIOLATION

In writ petitions, the principle of jus naturale (natural law) and the protection of fundamenta iura (fundamental rights) should be at the forefront. Demonstrating how the violation of rights, especially under jus vitae (right to life) and jus aequum (right to equality), is central to the petition's success. Here, habeas corpus (you shall have the body), mandamus (we command), or certiorari (to be informed) may be invoked.

Rule 5
(RES IPSA LOQUITUR)

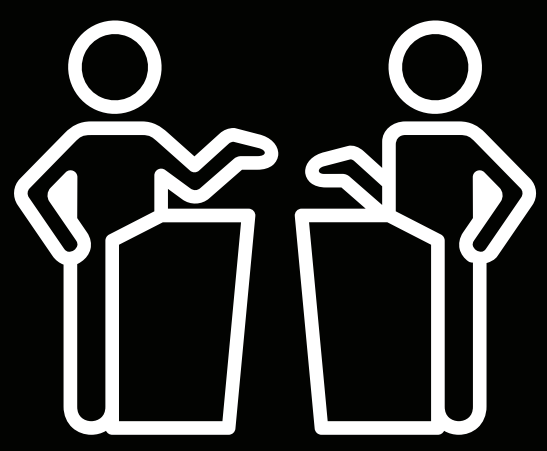


PREPARATION OF SUPPORTING DOCUMENTS

Properly organized probatio (evidence) and affidavitum (affidavits) should support the claim. Presenting clear and undeniable facts under the doctrine of res ipsa loquitur (the thing speaks for itself) helps the court understand the violation without needing excessive interpretation.

Rule 6

(AUDI ALTERAM PARTEM)



ORAL ARGUMENTS WITH CLARITY AND PRECISION

Advocates should follow the principle of audi alteram partem (hear the other side) by ensuring both sides are fairly represented, but their arguments should be precise and concise. They must anticipate questions using argumentum ab auctoritate (an argument from authority) and respond using lex fori (law of the forum). Keeping the arguments ex tempore (without preparation) and concise is critical for persuasion.

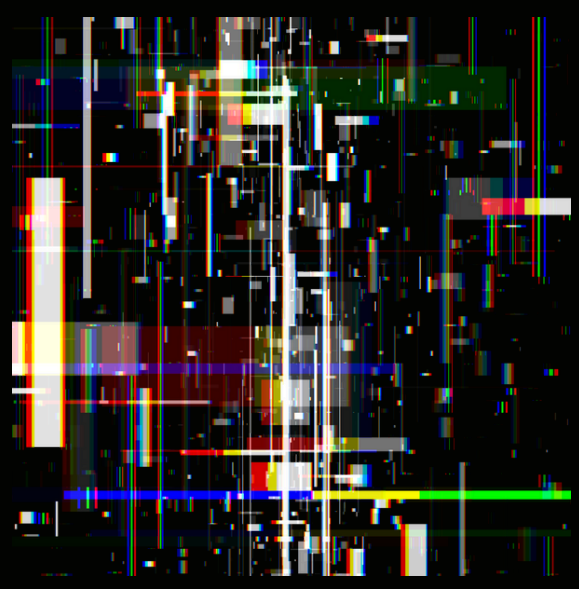
Rule 7
(RES PUBLICA)



USE OF PUBLIC INTEREST AS A STRATEGIC POINT

In actio popularis (public interest litigation), it is critical to emphasize res publica (public affairs). Demonstrating pro bono publico (for the public good) and how the case affects erga omnes (toward all) will highlight the significance of the case beyond the individual petitioner's rights.

Rule 8
(ULTRA VIRES)

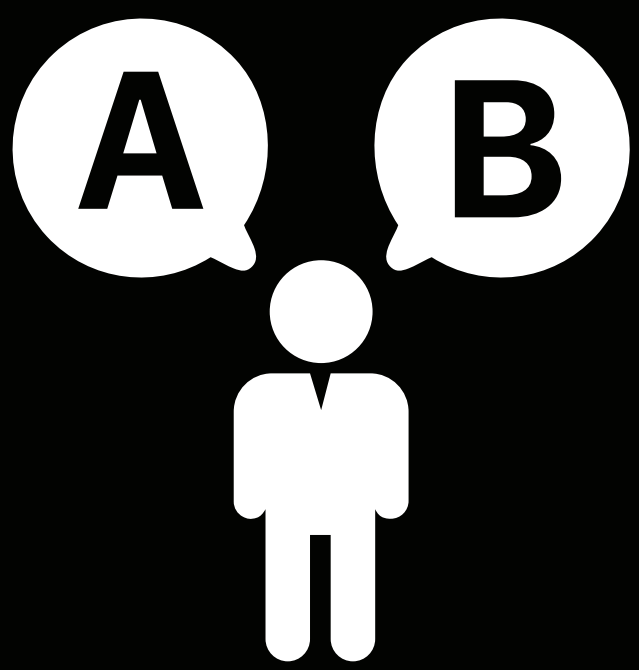


HIGHLIGHTING PROCEDURAL OR JURISDICTIONAL ERRORS

Advocates should focus on identifying actions that are ultra vires (beyond powers) or sub judice (under judgment) when challenging administrative decisions.

Pointing out procedural lapses in due process of law (correct legal procedure) or jurisdictional overreach using coram non judice (before one not a judge) is key to the argument.

Rule 9
(UBI JUS IBI REMEDIUM)



PRESENTING ALTERNATIVE REMEDIES

Advocates must establish that no adequate remedium (remedy) exists, following the maxim ubi jus ibi remedium (where there is a right, there is a remedy). They must demonstrate prima facie (at first sight) why the writ jurisdiction is necessary due to the absence of other remedies.

Rule 10
(CAVEAT SCRIPTOR)



CRAFTING COMPELLING WRITTEN SUBMISSIONS

The principle of caveat scriptor (let the writer beware) applies when drafting written submissions. The document must be meticulously constructed, ensuring that all claims are verba legis (words of law), supported by probatio (evidence), and that every assertion is bona fide (in good faith).

In my next post, I'll be sharing some Golden Ancient Indian Rules for effectively presenting your case before the bench. Stay tuned and follow me for more insights!

Let's Connect