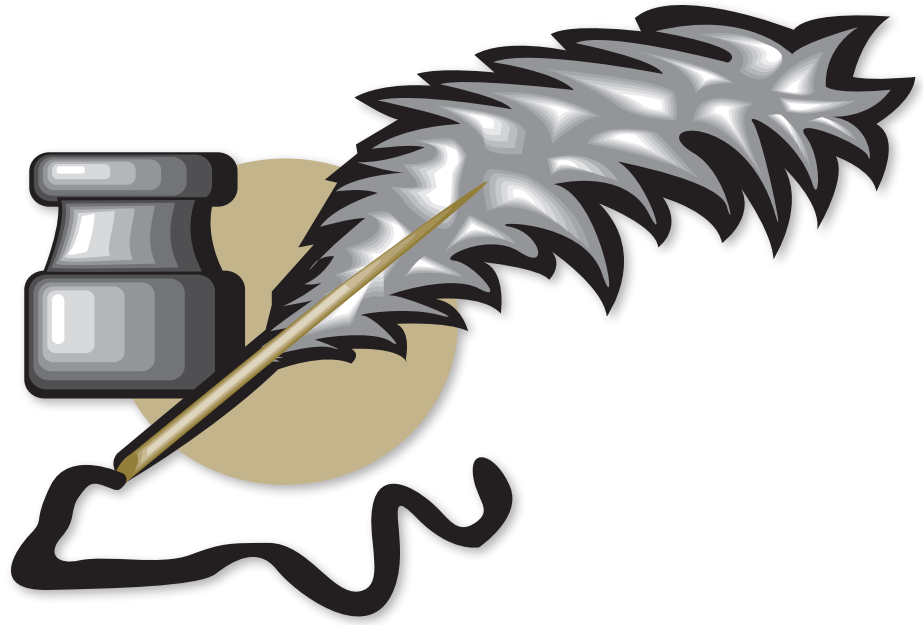


Five Steps to



Improve Your Legal Writing

By Cherisse Mastry Patton*

Good writing is transparent.

It disappears into the background and allows the writer's meaning to shine through. As attorneys, in our haste to stylize language for the page, we sometimes forget about the most important component of our writing, the reader. Our goal as writers should always be to convey information to the reader in as painless a way as possible. Overwritten, contrived material only serves to hinder this process, as does underwritten, sloppy material. It takes a good deal of effort to deliver a clear, straightforward analysis. To this end, the following tips can be used to help you deliver writing to your readers that is as painless to produce as it is to consume.

(1) *Play by Your Own Rules.* Whether you are writing a memo, drafting a motion, or preparing a proposal, internal consistency is key. All style and usage rules should be applied consistently throughout your document. Many style rules are flexible. More often than not, it is better to be consistent than to be "right." For example, if you decide to use a comma before "and" in a series, then go for it—every single time.

The first step is to choose your style guide. Pick one and stick with it. Flipping through multiple books or Googling indiscriminately could cause your consistency to suffer. I recommend either *The New York Public Library Writer's Guide to Style and Usage* or *The Chicago Manual of Style*. Both are excellent resources, and you cannot go wrong choosing either one as your primary guide.

The next step is to create your own personal style rules, and remember them. Print them on a sheet of paper, and keep them near your monitor. Apply them religiously.

(2) *Use Your Time Wisely.* Generally, legal writing involves the following steps: research, outline, draft, revisions, and final copy. But the process does not always flow as smoothly as we would like, and occasionally even good writers get bogged down in revisions where they lose valuable time. Many writers start out strong with a clear voice and straightforward language only to come to a grinding halt during the revision process because they have become entangled in grammatical

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nitpicking. Each sentence becomes a struggle, and, before long, the writer is back at the beginning making heavy-handed changes. A related problem involves a different kind of revising—meticulously improving ones writing by embellishing previously simple sentences with adverbs, adjectives, and compound phrases. Engaging in either practice causes needless anguish for the writer and does nothing to help the reader. Yes, we should always edit our work to ensure consistency, avoid grammatical errors, and improve flow, but overdoing it can be worse than doing nothing at all. Short sentences make strong points. They should be preserved. Put a time limit on your editing, and remember that clarity is the key. Give yourself the freedom to be less than perfect. If passive voice conveys your meaning clearly, go with it. Do not waste ten minutes creating an awkward construction just to use the active voice. And if you find yourself logging onto *Dictionary.com* or picking up a thesaurus in order to give your sentence a little something extra, think twice about whether that adjective or adverb will add clarity to your text. Chances are it will only muddy an already well-turned sentence.

(3) *Avoid Blatant Errors.* Nothing stops a reader faster than the wrong word tucked neatly into a sentence. While watching the evening news recently, I witnessed a weatherman's blunder when he presented a chart with the heading: It could [of] been worse. Errors like this one shake a reader's confidence in the writer, and legal writing is one area where lost credibility can be costly. We all have our own personal Achilles heel when it comes to grammar and usage, be it pronoun problems or words that never fail to confuse. The easiest way to avoid blatant errors is to take note of items that cause you to pause while writing, especially those that make you reach for the nearest style guide. Draft a cheat sheet of content that proves to be continuously problematic, and keep it close at hand.

(4) *Use Commas Wisely.* The rules of punctuation serve one purpose; they prevent the reader from becoming confused. The punctuation mark that tends to cause the most confusion is the comma. Documents riddled with commas can read like staccato jazz, interesting but hard to follow. A dearth of commas can be equally unsettling to the reader. The trick is to find a workable medium. Doing so is to some extent a matter of personal style as there is flexibility in the application of commas. However, there is one area where the correct use of commas is imperative (and most often problematic)—with essential and nonessential clauses. Commas are used to set off nonessential clauses. A nonessential clause can be deleted from a sentence without altering the meaning of the sentence. Consider the following sentence: Every lawyer who makes frequent trips to court should dress conservatively.

Sample Style Rules

- (1) Use Bluebook T.6 abbreviations for all words in case names, except for Electric, Electrical, Electricity, and Electronic. These are not abbreviated.
- (2) "Exhibit(s)" is capitalized when referring to a specific exhibit, such as "Exhibit A," but it is lower case when used otherwise, such as "the exhibits attached to this motion."
- (3) Place apostrophe as follows: homeowner's insurance not homeowners' insurance.
- (4) "See" is not italicized when it precedes a reference to an internal exhibit, but it is italicized for all external references, including online resources. For example, See Exhibits A and B, but *See Smith v. Jones...*
- (5) Do not use superscript in case citations. For example, (1st Cir. 1991).
- (6) Use a comma before and/or in a series.
- (7) The words "email" and "website" should appear as one word, no hyphen, lower case.
- (8) Do not place periods at the end of items in bulleted or numbered lists unless the language in at least one of the items forms a complete sentence.
- (9) Place semicolons (not commas) at the end of items in a series in bulleted or numbered lists. The final item should end with a period.

The phrase "who makes frequent trips to court" is an essential clause. Mistakenly setting off this clause with commas would incorrectly alter the meaning of the sentence to imply that every lawyer should dress conservatively regardless of his or her attendance in court.

(5) *Play to the Crowd.* Remember who your audience is, and write to that level. Be conscious of the fact that motions and memos will end up on the desks of judges and law clerks, partners and senior associates. These individuals are perceptive, and their time is valuable. It is therefore essential to avoid overkill in your writing. Do not throw every argument you can think of at the reader. Leave the weakest arguments out. Your reader will have more confidence in you if he or she is not forced to disagree with you on small points. Joshua Wolfshohl, an associate in the bankruptcy section of Porter & Hedges, L.L.P., formerly the law clerk to The Honorable Wesley W. Steen, United States Bankruptcy Judge, has first-hand experience weeding through documents rife with overkill: "Reading a twenty-page document that should have been six pages is the most difficult thing to deal with. Although it is normal for lawyers to make alternative arguments, when I see nonsense thrown in, it makes me believe that the writer does not have faith in his or her primary points; this tends to erode the credibility of both the document and the lawyer."

Finally, try not to write your best points to death by regurgitating multiple variations of the applicable rule of law. Avoid the urge to pad your legal reasoning with language from only marginally related cases and statutes. Instead, use real-world examples and comparisons whenever possible. Giving your reader a chance to view your legal theories through a practical lens will help to crystallize your point in the reader's mind.

Practicing law can be stimulating and deeply satisfying, but, most days, it is hard work. At times, the task of legal writing can feel like a slow climb up a steep mountain. By following these tips, you will be able to take some of the pain out of the process and improve the quality of your writing.

Reference

The New York Public Library Writer's Guide to Style and Usage, New York, N.Y.: The New York Public Library Publications Program, 1994.

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Sample Cheat Sheet

- (1) Its/It's: "Its" is a possessive pronoun. "It's" is a contraction; substitute "It is" and consider whether the sentence still makes sense.
- (2) Were/Was (subjunctive mood): In sentences that state conditions that are untrue or unlikely to occur, use "Were": Tom acts as if he were Scott Turow (untrue; he is not and never will be).
- (3) That/Who (referring to persons): Use "That" to refer to a group of people: Lawyers that focus solely on their work are susceptible to burnout. Use "Who" to refer to an individual: A lawyer is a person who understands the importance of good writing.
- (4) Precede/Proceed: "Precede" means to go or come before: A precedes B. "Proceed" means to move forward: Please proceed with the deposition.
- (5) Who/Whom: Substitute "He" for "Who" and "Him" for "Whom" to determine which to use: [] do you want on this project? You want him on this project. Use "Whom."
- (6) M-dash: M-dashes can be used instead of commas to create emphasis or avoid confusion; they can also be used instead of parentheses to provide extra information. A single m-dash can be used instead of a colon or to show hesitation or broken speech.