

WHAT JUDGES WANT: THE ESSENTIALS OF WRITING FOR A COURT

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If you are a new lawyer, you soon will notice one of the profession's puzzles: Everyone believes it is important to write well, and all advocates believe they do just that—yet judges continually grumble about the state of legal writing. What is the explanation?

The explanation is simple, if awkward for the legal profession: A fundamental split in views about legal writing. To many advocates, especially newer ones, good legal writing means good technical writing in a lawyer's specialized idiom. It also means a slightly formal tone, which provides the *gravitas* they consider appropriate to the work of a *juris doctor*.

Judges disagree. They read stacks of papers, and they share a strong consensus that good legal writing should be like any other good writing: direct, interesting, and above all, clear. Judges want plain English.

Good advocates should give judges what they want. So new lawyers need to learn what that is. Thus the following list of fundamentals, which I first wrote as a guide for new associates.

1. Before you start typing, decide exactly what you want to say. Literally articulate each of your points in the fewest words possible.
2. Examine the relationship among your points by making some kind of outline. This can be as short as a few points typed out so you can see how they fit together. Even an informal list will improve your paper's coherence. It also will minimize rewriting.
3. Abandon the idea that you are doing something called "legal" writing. Your goal is good writing, period. Write for the reader of a good, general-circulation newspaper or magazine. Or picture yourself standing in court, explaining your case to a judge.
4. Show your structure to the reader by using substantive headings and sub-headings.
5. Do not waste your first sentence by repeating the paper's title. Take a lesson from journalists, who work hard to craft strong leads. If you are writing for a trial court, begin by telling the court, in plain English, exactly what you want it to do. If you are writing an appellate brief, begin with a strong sentence that stakes out your theme.

6. Judges want overview. Give them a road-map sentence or paragraph.
7. Use real names, not party titles. Do not use acronyms, unless they are part of the vernacular, like IBM. And do not capitalize words unless you would see them capitalized in a newspaper.
8. Be direct. For each topic, get to the point. When you have made your point, stop. Most papers are too long.
9. Make one point per sentence. Long sentences often betray vagueness in the writer's own mind. Much like long briefs.
10. Pay attention to the precise meaning of words. Do not misuse the verbs that lawyers commonly get wrong. Don't write "claimed" when you mean "contended." Don't write "advised" when you mean "told." Don't ever use "utilize." And describe judicial opinions accurately. When a court "holds," say so. If it only "explains" or "observes," say that as well. To the surprise of many new associates, courts never "think."
11. Google "legalese" and you will see lists of words and phrases that only lawyers use. The best writers use legalese the least, and you should not use it at all. This includes verbal tics that are peculiar to lawyers. So never write "said" contract, "such" document, "the subject" transaction, or "pursuant to" anything. Don't use a clump of words where one word will do: "in regard to" instead of "about," or "at present" instead of "now." Don't delete articles ("a" or "the") or the word "that." Do beware the much-overused "regarding." And don't ever use "as such;" it almost never has a specific antecedent and is, therefore, vague and confusing.
12. Do not build your paper with block quotes. Break quotations into pieces and walk the reader through them. If you absolutely must use a block quotation, lead up to it by telling the reader the point: "Section 1 specifically requires Jones to give notice: . . ." Writing this transition forces you to explain why you thought the quotation was important in the first place. It also ensures that the reader will not skip over your point.
13. Pay careful attention to the use of authorities. Here are some basics.
 - a. The judge wants to see your best case, so normally you need only one citation for each point. It often suffices to state a generalized rule, cite an authority for it, then apply the rule to your case. If appropriate, briefly explain how the facts of your case parallel the facts of the authority you cite. Try to show that your facts are stronger.

b. Look for a case that supports your substantive position and grants the procedural relief that you want. So, if you are moving for summary judgment, try to cite a case that affirms a grant of summary judgment.

c. Do not bury the point of a case in a parenthetical.

d. If you have not referred to a case in a page or two, say more than “*Jones, supra.*” Your readers can’t remember what that means. Don’t force them to interrupt their reading and shuffle pages to look for an earlier discussion of *Jones*.

14. When you think your paper is finished, read through your topic sentences. They should connect the paragraphs, each topic sentence linking in some way to the preceding paragraph. (This may require you do more than type “Moreover” or “Also” at the beginning of each paragraph; all too often these words are fancy substitutes for “And another thing . . .”) This step is important because it provides a check of your structure: If writing clean transitions is a struggle, your points probably are in the wrong order.

15. Recheck for errors in format, spelling, grammar, and citation form. Make sure that citations to the record are accurate. Judges consider good citation form a minimum requirement for a good attorney, and accuracy of record cites essential. These matters of detail can make or break a paper’s basic credibility.

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These rules are only a starting point; they will not make you a polished stylist. And experienced writers might sometimes, judiciously, depart from one or two. But if you follow these rules, you will not go wrong. Your work will be well-received, even appreciated, by every judge who reads it.

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