LEGAL WRITING 101: PRIMER FOR NEW LAWYERS
By Trent P. Stechschulte

Young lawyers entering the profession today are expected to have polished writing skills. One of the most important day-to-day exercises of practicing law is communicating and writing clearly. Whether you are writing a memorandum for your supervisor or emailing a prospective client, my hope is that this short article will refresh you on some writing principles you may have forgotten.

Consider your audience. Your writing should guide the reader – whomever that may be. Keep in mind, you are not writing for yourself, but for your audience. Make it easy for your reader to understand what you are saying. If your audience is a court, know the local rules, the judge's preferences and experience, and be exhaustive in your research. If you are drafting a memorandum for your supervisor, fully analyze the issues and provide an answer that is supported by your research.

Outline and organize your ideas before you begin. One way to clarify your message is to outline your ideas before you begin. That way you can avoid missing any key points. If you are not ready to outline, “brain dump” by writing down every incomplete thought, note, or idea you have. Doing this can help you generate ideas and envision how to organize the content. Once you have that structure, outline as completely as you can. And because most legal documents are broken into sections and subsections, outlining before you start writing can save you time.

Favor brevity. Refine your document and only include necessary points, and present them with short, crisp sentences. Concise writing exudes confidence. It makes your arguments more persuasive and ideas more convincing. The average sentence should be under 20 words and your average paragraph should be 4-8 sentences long. Of course, “average” does not mean “every.” You may still write longer sentences and paragraphs when necessary. Longer sentences are sometimes necessary to adequately explain an idea. But when you can, trim your sentences, only leaving the essential.

Prefer writing in the active voice. One way to increase brevity is to write in the active voice. This usually requires fewer words, and your writing is more lively and authoritative. The easiest way to distinguish between active and passive voice is: you are doing the action in active voice. In passive voice, the actions are done to you. It is the difference between: “Testimony was heard from the plaintiff” and “The plaintiff testified.”

However, depending on the situation, it may be more advantageous to use passive voice. Regardless, find passive
voice constructions in your writing and decide whether converting to active voice can strengthen your message.

**Do not forget to use topic sentences or transitions.** Begin each paragraph with either a strong topic sentence stating the controlling idea of what is to come, or a connection that links paragraphs together or separates them into discrete parts. Readers assume that a new paragraph substantiates a separate, distinct idea or strengthens your previous paragraph. Give your readers that. Readers skimming your writing should be able to grasp the ideas you are promoting by simply reading your topic sentences and transitions.

**Avoid legalese.** In law school, we were asked to read cases from centuries ago, written by judges in a style that does not represent modern prose expectations. Unlike centuries ago, concise, clear writing is encouraged. Do not imitate the writing of judges from centuries ago. Avoid using phrases like herein, herewith, aforementioned, arguendo, the case at bar, or sua sponte. It is your goal to promote clarity. Using these abstract, dense legal terms makes your writing vague. Stick with plain, readable English. Doing so will help you better convey what you truly wish to say, and your readers will appreciate it.

Remove “of” and nominalizations when you can. Many times using “of” or a nominalization (words ending in -tion, -ment, or -ence) indicates you are using several words when one will do. For instance, “the majority of” can be changed to “most” and “an adequate number of” can be changed to “enough.” Likewise, nominalizations like “in conformity with” can be changed to “conform” and “make reference to” can be changed to “refer.” These principles seem simple enough, but many writers fail to catch them. Circle every “of” and nominalization in your next memo and see whether your sentences can be re-styled and improved.

**Name parties.** Traditionally, we are taught to identify the parties as Defendant, Plaintiff, Appellant, or Appellee. Feel free to identify the parties when doing so adds to your content. Referring to your client as Defendant throughout your brief can be dull. Depending on what the brief is about, bring your characters to life by referring to them by their names. Of course, if there are multiple parties in a case, this is not possible. Moreover, make sure that it is clear who the named party happens to be in the case, whether it be the “victim,” “store owner,” or other appropriate characterization.

**Quote effectively.** To write fluidly, do not overuse quotations. If you overuse quotations you risk that your readers will stop reading them. Also, your writing can become disjointed if you use quotations from different authors.

Nevertheless, you should use quotations, but when you do, try to use them as an integration into your own style and with context about the topic that you are writing about. Many young lawyers do not synthesize or paraphrase the idea, rule, or fact before quoting a line. “The court stated: (quote)” and “Ohio Rules of Civil Procedure states that: (quote)” are some typical examples of quotations found in writing. You can improve your use of quotations if you make a persuasive assertion before the quotation. For instance, “The Ohio Supreme Court has held numerous times that Tort Reform is constitutional: (quote)” or “In fact, the 6th Circuit noted such patient communication is not privileged: (quote)”. Paraphrasing an idea before your quote reinforces your message and makes your reader’s job easier.

**Continue improving.** Read great writing examples from exceptional authors. Purchase any book written by Bryan A. Garner or regularly read opinions written by Chief Justice John Roberts. Edit your writing and re-write sentences to improve clarity and style. Some people copy and paste each topic sentence in a separate document to determine whether the organization works. Others use writing guide checklists. Whatever works for you, stick with it and you will see improvements in your writing.

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A unique combination of law and humanity.


Sometimes, the peanut butter, as well intentioned as it may be, is just unwilling to meet the jelly half way.

That’s where I come in.

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