

ARTICLES

Ten Tips for Writing Effectively as Litigators, Part 1

General principles particularly applicable to legal writing by litigators

By Stephen L. Brodsky – September 6, 2022

To succeed, litigators must write well. After all, we are hired to advocate. To do that, we must be able to explain an issue, tell a story, assert a position, and yes, change a mind. We are nearly always writing when we are not in court. We draft pleadings, motion papers, legal briefs, letters to judges, and emails to opposing counsel and clients. In each of these, we communicate with a purpose. This article is a brief primer, in two parts. In the first part below, I discuss ten points to help you write effectively and find your own voice.

1. **Write in the active voice always (nearly).** The easiest way to write well is to use the active voice. We think in the active voice. We speak in the active voice. It is the clearest way to communicate. Compare “the contract was breached by Mr. Smith” with “Mr. Smith breached the contract.” Both sentences state the same thing, but the second is clearer and more direct. As a tip, check your writing for passive voice and simply switch the passive voice to active voice. You will be surprised at how your writing improves. Once you notice the passive voice in your writing (and in the writing of others), it will be hard to “unsee” it. Over time, you will instinctively write in the active voice. Certainly, at times, you will need to write in the passive voice, for example, if the event’s cause is unknown or if it is strategically useful not to stress something.
2. **Use plain, clear language.** Another easy way to improve your writing is to use simple, plain words. I have always admired writers who discuss complex concepts in the simplest of words—for example, a scientist who writes about quantum physics in straightforward language that a layperson can understand. To get results as litigators, our writing must be easy to understand. Remember that plain language does not mean plain arguments. Your legal analysis and factual storytelling do the work for you and your client. Don’t use high-minded SAT words. They will get in the way and pull the reader out of your writing. Again, there are exceptions. There may be a word that distills what you need to impart. Use it. But be selective. Just like underlining, avoid overkill.
3. **Rely on verbs.** Verbs are the engines of our sentences. They are the words that matter. They impart the most important information to the reader: what happened. For example, the defendant defrauded your client, stole your client’s trade secrets, or disregarded his fiduciary duties. If you write in the active voice, use plain words and remove excess language—all that is left are your verbs. Focus on them and use alternatives to add some flair.

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4. **Don't rely on adjectives and adverbs.** Certain attorneys believe they need to use adjectives and adverbs to create drama or make important points. It is a common mistake. They often compound fluff while adding little true substance. Stick to the facts and your arguments. Instead of a dramatic adjective or adverb, use a verb that says what you want to say in a single punch. Instead of "Mr. Smith unjustifiably converted," consider "Mr. Smith stole." Remember your medium. If you are writing a complaint, use appropriate legal terms for the causes of action. Your writing can be freer in your briefs.
5. **Fewer words are better, and fewer syllables are better still.** Avoid superfluous words in your writing. Remember that you must keep the reader's attention. At the same time, you must write with impact. Review your sentences. Is each word needed? Say it with fewer words. As an exercise, write a "+" over every needed word and a "0" over every unneeded word. Compare the phrases "so that he may invest" or "in order to invest" with "to invest." The last says it with the fewest words. Then, focus on the syllables in your words and use words with fewer syllables. As examples, compare "use" with "utilize," and "show" with "demonstrate." That said, remember there are exceptions. You may find one word that conveys your point. If so, use that word.
6. **Don't use long introductory subordinate clauses.** Certain writers may introduce a new point by repeating their prior point in a lead or clause in their introductory sentence. We know this convention all too well. As examples, "While Mr. Smith was converting ABCO's monies, Board members...." or "At the same time that Mr. Smith was converting ABCO's monies, Board members...." They do not work. They distract the reader and are simply repetitive. Give your reader more credit. She will certainly remember what you wrote in the paragraphs and pages before. Just start your next point. You will see your writing has greater impact. Try this: "Board members never noticed Mr. Smith's theft."
7. **Know your medium and the audience.** Your writing should befit the medium and audience. What are you writing? A brief? Letter? Email? Who is reading it? The judge? Your client? Professional opposing counsel? Unduly aggressive opposing counsel? Be mindful and adjust. It is fine to be colloquial in your email to a long-standing client or a LinkedIn post, but not in a letter to the court. For example, I use contractions in emails to colleagues and friends, and here in this informal practice point, but generally nowhere else.
8. **Don't be slavishly bound by grammar; set your writing free.** Realize that you need not be bound by strict rules of grammar. It's OK if the circumstances don't warrant it. In fact, your writing will be stronger when it is not constrained and formalistic. I use my favorite *Star Trek* split infinitive to make this point: "to boldly go" versus "to go boldly." Start a sentence with a "but" now and then. Sentence fragments are not an anathema. When done right, they will drive a point home in a manner that a full sentence will not.

Really. But stay professional and never be improperly colloquial. Our job is to communicate and persuade. Have some fun and use a bit of flair.

9. **Vary sentence structure and length to keep it interesting.** To keep your reader engaged and have fun while you write, remember to vary your sentences. To build on a point, it may be helpful to have a series of sentences of a certain structure, and end with a short conclusion. Or vice versa. The best advice is to see your writing as speaking.

10. **Your writing should be invisible; stay out of it!** As the last point, stay out of your writing. We have all encountered attorneys who rely on snark and derision. They evidently believe sarcasm and scorn will persuade the reader they are right. After all, they must be right if they are so arrogant! Perhaps they believe they are in a verbal battle with opposing counsel. Perhaps they are trying to cover for a personal disappointment or harm. No matter. Those attorneys do not serve their clients or themselves. Remember: your words are not about you. They do not make you important. Your job is to serve your client well. Take satisfaction in that.

The second part of “Writing Tips for Litigators” will focus on brief organization and structure—stay tuned!

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