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## When 'Good Enough' Won't Cut It: 3 Tips For Plain Writing

By **Caroline Simson**

Law360, New York (August 7, 2015, 5:25 PM ET) -- It's an easy habit for lawyers backed against unyielding time constraints to dismiss their writing as "good enough," but attorneys who pay no heed to the golden rule of writing — write for others as you would want them to write for you — can expose themselves to problems down the road.

Here, legal writing experts lay out three tips every attorney should follow when faced with a blank screen and a looming deadline.

### **Treat Your Readers with Empathy**

One of the most important things to think about when you're working on a project — whether it's writing a brief for the U.S. Supreme Court or just drafting a letter to a client — is to know your audience and their educational background. Not only is that helpful in terms of setting a tone, but it also helps to quickly establish what you're trying to accomplish, setting up a more concise and acutely targeted draft.

It wouldn't make sense to write a letter to a client that a layperson wouldn't be able to understand, and the same concept rings true with certain documents that could later be the subject of dispute, according to Elizabeth G. Yeargin, a partner in the Ohio-based firm Brouse McDowell LPA and former adjunct professor of legal research and writing at the University of Akron School of Law.

"Clients want succinct understandable language that gets the point across without 'lawyering' it up, if you will," she said.

Breaking yourself of the habit of including old formalisms can be a tough. In some cases, associates may be leery of changing a form document that's been used by the firm for years and has worked in the past. Attorneys, regardless of experience, might think that's what clients expect or want.

But that's often far from true, according to Jeffrey S. Ammon, a partner at the Michigan firm Miller Johnson PLC, who's written about the topic for the Michigan Bar Journal.

"I think the world of clients tolerates ridiculously ambiguous and verbose contract language, and so we get away with it," he said. "I've said to clients, 'Heaven help us if all of you were

to wake up one morning and decide that's it, I don't want to read wisseth, and heretofore, and party of the first part, and licensor and licensee. I don't want to read that crap anymore."

Just because a judge gives you a 20-page limit on your brief doesn't mean you have to use the entire 20 pages, according to Christine Azar, a partner with Labaton Sucharow LLP.

"I had a judge in a case who said you've got a 40-page page limit, but I'll tell you right now I get bored after 20 pages, so keep that in mind," she said.

### **Avoid Jargon and Unnecessary Words**

Regardless of your reader's educational background, it's useful to remember that none of them is likely to appreciate the typical pitfalls that can turn a 20-page brief into an invitation for a midday snooze, like nominalizations, unnecessary or misused words, and, of course, the dreaded legalese.

"Legalese is bad because it sounds pretentious and it really doesn't add any meaning at all," said Chadwick C. Busk of Busklaw PLC, who's written on the topic for the Michigan Bar Journal.

Particularly egregious examples include phrases such as in witness whereof, in consideration of, deemed, and duly, all of which are "just silly," Busk said.

Other examples include here- and there- words such as herein and thereby, according to Joseph Kimble, a professor emeritus at Western Michigan University–Cooley Law School, who led the work of redrafting the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

"Not only are they stuffy and archaic, but they can be ambiguous," he said. "You sometimes don't know whether herein means in this paragraph or in this entire document, and there's lots of cases out there that center on the meaning of the words herein, or therein, or hereby, or thereof."

Particularly if your reader is a judge, he or she isn't going to have a mountain of time to get through the document, according to Matthew Salzwedel, who created the Legal Writing Editor blog and is currently the corporate counsel for a Minnesota-based company. Eliminating unnecessary words or endless sentences that can cause a reader's eyes to glaze over can only help your case, he said.

"Readers, whether they be clients or judges or whoever else, are always looking for a way to tune out," he said. "I believe that a lot of lawyers — who of course think that they're great writers — write for themselves and not for their audience, and so that requires a little humility."

Avoiding unnecessary repetition throughout the document and in individual phrases can be a useful tip, according to Evan Tager, a partner in Mayer Brown's Supreme Court and appellate and class action practices.

"A lot of writers have very clunky kinds of styles, where if you look hard at the sentences or the paragraphs, you see phrases or even full paragraphs that just don't say anything more than what's already been said, and that is a form of lack of clarity," he said. "A careful reader goes into the process assuming that things are being said for a reason."

## **Make Time for Editing**

Even keeping those guidelines in mind, lawyers aren't likely to hit a grand slam their first time at the plate. While most attorneys are under continuous time pressure — both from clients who want their costs kept low and from deadlines in court cases — it's often best to make time for editing to ensure that your first draft is not your last.

Even without hours and hours to put toward redrafting your documents, it's possible to avoid common grammatical or spelling errors as well as misused words or phrases, by simply printing out the document to see it with fresh eyes, or by using a different font. Making revisions with a pencil can also be a useful tool.

"Read the piece aloud to see how it sounds," Stephen Gillers, a professor at the New York University School of Law, said. "If it's not clear, change it. Unless you're a genius like Shakespeare, Lincoln, or Oscar Wilde, your first draft will be embarrassing. Accept that."

It's often helpful to have another attorney or a layperson who's not involved in whatever you're writing about read your document to ensure your meaning is clear and concise. If possible, set a personal deadline ahead of the actual deadline so you have time for review and edits, according to Wayne Schiess, a senior lecturer at the University of Texas Law School and director of the David J. Beck Center for Legal Research, Writing, and Appellate Advocacy.

"Many lawyers are under deadlines and pressure from clients to keep the bill down, and what gets sacrificed in the written product sometimes is the edit," he said. "You can get the draft done and maybe you clean it up a little, but to really polish and make it really good, it takes a lot of editing time."

If you don't have time for others to read your writing, it can also be helpful to consider whether you'd actually use the word in real conversation, Salzwedel said, noting examples such as pursuant to instead of under, or prior to instead of before.

Another alternative could be to know and watch out for your particular writing foibles with a self-editing checklist, according to Anna Hemingway, an associate professor at Widener University Commonwealth Law School and a nationally known expert in legal writing and legal education.

Even with these tips, it's useful to keep in mind that drafting a really tight, concise, and well-written document is just going to take practice, practice, practice.

"Whatever you're writing, you get better only by committing to a continuing process of learning about it, practicing it, reading good examples and improving," Miller Johnson's Ammon said.

--Editing by Chris Yates and Kelly Duncan.

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