

# CLEAR & EFFICIENT LEGAL WRITING

TOP TIPS, PET PEEVES, AND THINGS YOU WISH YOU'D LEARNED IN LAW SCHOOL

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## WHY ME?

"Excellent penmanship." – C.S.

"Almost never uses run-on sentences." – J.Z.

"She's fine." – P.B.

"Does not make me pull my hair out." – N.C.

"Probably capable of diagramming a sentence." – R.D.

"The precision with which she manages to dissect the exact moment my legal argument went awry makes even the most experienced appellate practitioners weep tears of joy and awe." – H.C.

"Strong opinions re: spaces after punctuation." – S.E.

"She's more than fine." – B.C.

"Kate's consistent use of the Oxford comma is prudent, judicious, and satisfactory." – C.H.

"Active soldier in the passive voice war." – K.C.

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## GOALS AND AGENDA

- Discover what style of writer you are—and the tendencies associated with that style
- Explore organizational top tips
- Rethink some common writing pitfalls
- Experience Kate's Legal Writing Lightning Round (patent pending)




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# WRITER, KNOW THYSELF

THE THREE TENDENCIES  
(WITH APOLOGIES TO GRETCHEN RUBIN AND ALL COMPOSERS EVERYWHERE)

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## BEETHOVEN: ALL NOTES, ALL THE TIME



- Characteristics:
  - Non-linear
  - Piles of notes
  - Refined over time
  - Heavy editing after the first draft
- Positives:
  - Emphasis on editing
  - Thorough documentation of process
- Drawbacks:
  - Potentially disorganized result

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## MOZART: IT'S ALL IN YOUR HEAD



- Characteristics:
  - Cerebral
  - Few or no notes
  - Written quickly
  - Light editing while in progress
- Positives:
  - Speed
  - Comprehensive product
- Drawbacks:
  - Lack of thorough editing

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## HAYDN: AS THE CROW FLIES



- Characteristics:
  - Linear
  - Notes as needed
  - Clear links between sections
  - Heavy editing while in progress
- Positives:
  - Strong structure
  - Transitions and connections
- Drawbacks:
  - Writer's block

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## AND YOUR POINT IS ... ?

- Develop workarounds for habits that might slow you down
- If you're like Beethoven:
  - Focus on organization and connections
  - Read for synthesis of ideas
- If you're like Mozart:
  - Pay attention to editing
  - Come back later
- If you're like Haydn:
  - Consider the big picture
  - Look for less-obvious links




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## ALLES IN ORDNUNG

ORGANIZATION: IT MAKES OR BREAKS YOU

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## THE "HOKEY-POKEY" QUESTION



- Ask yourself: *what is this project all about?*
  - Purpose & Desired Result
  - Audience
- Remember: not all projects have the same goal!
- Write toward the answers to the ultimate question

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## IRAC: IT'S NOT JUST FOR LAW STUDENTS. SERIOUSLY.

- I** Issue
- R** Rule
- A** Analysis
- C** Conclusion

- Topic sentence for each section
- Nothing wrong with breaking it down further!
  - General rule ⇨ secondary rule
  - General rule ⇨ factors within the rule
  - General rule ⇨ relevant exceptions
- Roadmap the more complicated parts
- New paragraph for each new concept
  - Paragraph for each factor being applied
  - Conclusion and issue often stand alone

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## STRUCTURE LIKE AN EGYPTIAN

- Build arguments like a pyramid:
  - Main premise
  - Details, facts, circumstances that support that main premise
  - Additional nuance to those details and facts
- Lean on your strongest argument
  - Don't save the best for last
  - Provide multiple reasons to find for you




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## TOPIC SENTENCE HIDE-AND-SEEK



- Don't hide your point: use your topic sentence to tell your audience precisely what you want!

*Plaintiff's claim should be dismissed because (1) a constructive trust is not a standalone cause of action, and (2) Plaintiff has not pled unjust enrichment or any other claim that would justify imposing a constructive trust.*

- Strung together, they should look like an outline
- Useful to highlight places you compare, contrast, or fully distinguish cases.

*The fact that the officer saw no indicators of impairment after stopping the vehicle is why Smith and its progeny are inapplicable to this case.*

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## HEADINGS, SUBHEADINGS, AND NUMBERED LISTS



- Labels help the reader follow
- Consider headings and subheadings when you're:
  - Burdened with a long list of factors
  - Raising multiple alternative arguments
  - Summarizing a sequence of hearings
- Numbered lists and bullet points aren't off-limits

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## COMMON PITFALLS

THE JOURNEY OF A THOUSAND MILES ENDS QUICKLY IF YOU FALL IN A RAVINE

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# I DON'T KNOW WHY I'M SHOUTING, BUT I'M SHOUTING!



- Remember your purpose
- Keep it tight
  - Avoid collateral issues
  - Don't help their position
  - Resist the urge to "beef"
- Credibility risk

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# PASSIVE VOICE: THE *BY ZOMBIES* RULE

- A passive sentence still makes sense when you tack *by zombies* on at the end
  - My dog ate my homework.
  - My homework got eaten.
- Active voice is more compelling and certain
  - Positively identifies the actor
  - Less likely to leave questions
  - More succinct



- But remember: passive voice is not *always* bad!
  - Decreases responsibility by the actor
  - Shifts emphasis
  - Perfect for irrelevant or unknown actor

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# TRANSITIONS: TOO MUCH OF A GOOD THING?



- Transitions are useful!
  - Map out the direction of your argument
  - Increase or decrease emphasis
  - Help with flow
- Not every sentence needs a transition
- Numeric transitions and consistency:
  - *Good*: First, second, then
  - *Bad*: First, second, for one, additionally

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## SERIAL: NOT THE PODCAST, BUT THE COMMA

**WITHOUT THE SERIAL COMMA**

- My brother had a birthday party. He shocked us by inviting Snoop Dogg's acrobatic dancers, Taylor Swift and Cory Booker.



**WITH THE SERIAL COMMA**

- My brother had a birthday party. He shocked us by inviting Snoop Dogg's acrobatic dancers, Taylor Swift, and Cory Booker.



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## THE ALOT

- A *lot* is two words, not one
- Allie Brosh of *Hyperbole and a Half* imagines the one-word form as a furry creature

**ALOT MORE DANGEROUS**



...alot more dangerous

**ALOT OF MIST**



**I LIKE THIS ALOT MORE**



**I HEAR THAT ALOT...**



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## PLAIN LANGUAGE: KEEP IT SIMPLE, COUNSELOR

ONE DOES NOT SIMPLY TAKE



- Big words and chunky synonyms aren't better
- Do you really need the Latin?
  - *De novo review* ⇨ unlimited review
  - *Pro se defendant* ⇨ self-represented defendant
- Save intensifiers for when they're deserved

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## PLAIN LANGUAGE: TRY TO AVOID ...

BLATANT LEGALESE	REDUNDANCY	WORDINESS
<ul style="list-style-type: none"> <li>• Hereby</li> <li>• Heretofore</li> <li>• To wit</li> <li>• Whensever</li> <li>• Hereinabove</li> <li>• Aforementioned</li> <li>• Wherefore</li> <li>• Whereas</li> </ul>	<ul style="list-style-type: none"> <li>• Close proximity</li> <li>• Red in color</li> <li>• During the course of</li> <li>• Any and all</li> <li>• Each and every</li> <li>• Full force and effect</li> <li>• Final and conclusive</li> <li>• Unless and until</li> </ul>	<ul style="list-style-type: none"> <li>• Because of the fact</li> <li>• Despite the fact that</li> <li>• In order to</li> <li>• For the purpose of</li> <li>• For the reason that</li> <li>• At this point in time</li> </ul>

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## UNPUBLISHED OPINION CITATION

appellate case number

Party v. Party, No. 123,456, 2019 WL 98765432, at \*2 (Kan. App. 2019) (unpublished opinion).

year of publication

Westlaw number—or LEXIS if you're into that kind of thing (with pinpoint citation to the star-numbered page)

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## TIGHTEN UP YOUR INTRODUCTIONS

- Attorneys rely heavily on *pro forma* introductions
- Try long-form introductions with guideposts for your motion
  - Identify party and counsel
  - Request relief
  - Present topics in order
  - Short, low-risk introduction

**STATE'S MOTION TO STOP USING OUTDATED *pro forma* LANGUAGE**

The State, by Assistant District Attorney Kate Duncan Butler, respectfully moves this Court to strike outdated *pro forma* language from pleadings and documents. For the reasons outlined below, this language wastes words and serves only a limited purpose. Instead, parties should try using their opening paragraph to introduce the subject of their motion.

1. This method helps guide the court in reading the motion.
2. And it serves the same purpose.

As such, the State respectfully requests this court strike all of this language from future motions.

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## MISPLACED MODIFIERS: WHO YOU DESCRIBIN', WILLIS?

- *The police officer noticed a beat-up car on the way to a call.*
  - Implies that the car is headed to the call, not the officer.
- Solution: link your descriptive phrase to its noun
  - *On the way to a call, the police officer noticed a beat-up car.*




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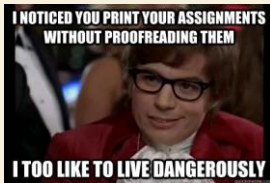
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## WHEN IN DOUBT, PROOFREAD YOUR WORK!



- Common proofreading problems:
  - Copy-and-paste errors
  - Missing words
  - Incomplete thoughts or sentences
- If you're not a great editor, try:
  - Printing it out instead of editing it on the screen
  - Reading it aloud
  - Handing it to a trusted colleague

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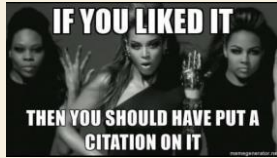
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## I GOT A POCKET, A POCKET FULL OF CITATION TIPS

- Avoid mid-sentence citations
- Use string cites sparingly
- Keep your parentheticals pithy



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## LAST BUT NEVER LEAST: CREDIBILITY IS KEY!

- The court needs to trust you when you write!
- Four huge *don'ts* in legal writing:
  - Don't ignore bad facts
  - Don't ignore opposing cases
  - Don't misstate reality
  - Don't go after your opponent with a compositional machete



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