



Valerie T. McGinty —
LAW OFFICE OF VALERIE T. MCGINTY



Daniel U. Smith —
LAW OFFICE OF DANIEL U. SMITH

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Write well to win more

GOOD WRITING IS ESSENTIAL TO WINNING THE TENTATIVE RULINGS ON CRITICAL ISSUES

No matter how well you can cross examine a key witness or mesmerize a jury, in the end your ability to win more cases will depend upon your ability to write persuasively.

Why? Because a court's tentative rulings on most of the critical issues (and in all dispositive motions) will be based on the written papers of your opposing counsel and you. And tentative rulings are difficult to change. So, you want your writing to be so persuasive as to produce a favorable tentative ruling.

If you already love to write, then great. But what if you don't? What if writing feels like a long, arduous, and painful process? Good news: It doesn't have to be. If you commit to adopting just two of the suggested habits below, not only will your writing improve, you will enjoy the process much more. And the upward spiral begins – the more you enjoy it, the

better you'll become, and the better you become, the more you'll enjoy it.

Persuade your reader by writing with brevity, clarity, and honesty

You want to win the judge and staff attorney over to your side. But what style of writing do these readers find persuasive? Brevity, clarity, and honesty.

With brevity, you won't waste the reader's time. With clarity, you connect each point to the next so the reader is with you all the way to the inescapable conclusion you advocate. And with honesty, the reader can trust you to address any adverse law and unfavorable facts.

Because judges are human, we must heed Justice Scalia's reminder of "[t]he *human* proclivity to be more receptive to argument from a person who is *both trusted and liked*." (Making Your Case, A. Scalia and B. Garner, emphasis added.)

Most lawyers need to shed the style of the law student who is still trying to show the world how smart she or he is, or the style of the young lawyer who shows annoyance at opposing counsel's barbs or antics. It's not about us.

Law students adopt the academic style, which is full of throat-clearing, jargon, and complicated constructions that do not serve your reader. Instead, this style could (1) insult your reader, (2) make the reader work harder to comprehend your document, and (3) make the reader distrust you – thus defeating your goal of being liked, helpful, and trustworthy.

Young lawyers adopt an argumentative tone that does not show you to be likeable because you are embroiling the judge in mostly personal petty disagreements. And it does not show you to be

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trustworthy: “A shrill tone in a brief diminishes its persuasive force...If your position is strong and your client’s cause just, there is no need to subject [the reader] to a barrage of abusive argument. This approach is *unpleasant, ineffective, and counterproductive.*” – Honorable Harry Pregerson.

Six habits to improve your writing

Here are six habits that will immediately make your writing more persuasive:

- Pre-write the table of contents.
- Put an assertive, detailed heading on every page.
- Calendar briefing deadlines two days early to allow time for editing.
- Ensure that each section delivers what the heading promises.
- Delete hollow modifiers.
- Edit for brevity.

Habit #1: Pre-write the table of contents.

Writing the table of contents first is an easy and an effective way to achieve brevity, clarity, and honesty.

It helps you achieve brevity and clarity by forcing yourself to think clearly about your arguments, their supporting points, and their most logical order. In general, the facts should be presented in chronological order and legal arguments should be presented from strongest to weakest.

It promotes brevity by allowing you to easily identify (and eliminate) any redundant or unnecessary sections.

Finally, a Table of Contents promotes honesty because it exposes the document’s structure to the reader, who can jump right to the part of the document containing the needed information, where you promised it would be.

Habit #2: Use frequent assertive and detailed headings.

On virtually every each page of your brief, put an assertive, detailed heading. A short heading (two lines or less) promotes brevity by offering the reader a distillation of your point.

For clarity, a heading should assert a complete point and be punctuated like a

regular English sentence. For example, instead of a heading titled “Negligence” (which doesn’t even say what side of the issue you are on) it might say, “The driver was negligent in running the red light.”

For honesty, a heading should be detailed. You’ve worked so hard to collect evidence. This is your chance to use it by showcasing it in the heading. For example, instead of saying, “The product was defective for many reasons,” you might say, “Because the product did x and y, it was defective” or “The product was defective because (1)....., (2)....., and (3)....”

Habit #3: Calendar briefing deadlines two days early to allow time for editing.

A third habit to improve your writing is to calendar all briefing deadlines two days early to give yourself time to edit the brief. News flash – if you are looking for the most rewarding habit to adopt, this is it!

After doing all the hard work of drafting, now you can enjoy tinkering and perfecting what you have to make it sparkle and sing.

The best way to build a solid editing process is to cultivate a team. This could be yourself, a peer, and an outsider. You should be the first and last editor. This means reading through your own document before giving it to your editing team and again after incorporating all their edits before you file it.

For your editing peer, you can set up a reciprocal arrangement (and avoid any onerous burdens by agreeing to limit your editing on any given document to 30 minutes or less). Your peer editor is best-suited for high-level feedback (tighten your intro, delete this argument or that paragraph).

For your editing outsider, consider a staff person or a family member. Your outsider is the perfect person to tell you if your document makes sense, whether you have typos that spell check didn’t catch, and if there are any missing words.

Habit #4: Ensure that each section delivers what the heading promises.

The fourth habit that will improve your writing is to confirm that each section delivers the heading’s promise – nothing more, nothing less.

This promotes brevity by eliminating detours. It also promotes clarity and honesty by delivering to the reader exactly what you promised in the heading, making your document transparent and easy to follow.

You can achieve this by doing three things:

- Read your heading and then eliminate any paragraphs underneath it which are redundant or off-message.
- Then read your heading again to make sure it correctly summarizes the point made in the text underneath it.
- Now for the bells and whistles: review your heading to see if it includes the best details from the text below. Can you tighten the screws on the heading by making it more specific? Remember, it’s the details that will win your reader!

Habit #5: Delete hollow modifiers.

Hollow modifiers, such as “clearly,” “obviously,” and “certainly,” add no persuasive substance. These words are a crutch used by almost all of us. But the good news is they are easy to root out!

Hollow modifiers include the following: absolutely, certainly, clearly, completely, definitely, entirely, essentially, extremely, many, obviously, plainly, purely, several, seriously, totally, utterly, virtually.

These words impede brevity because they take up space without communicating any useful information to the reader.

More importantly, these words chip away at your hard-earned credibility because they are either weak (virtually, essentially) or, even worse, they exaggerate and oversell (clearly, certainly, obviously). You are about to become the most liked and trusted lawyer in the case – don’t ruin it by allowing your brief to be littered with hollow modifiers.

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For example, consider the word “obviously” in this sentence: “The product was obviously defective.” If you haven’t already made it obvious, the reader will not agree that it is obvious merely because you say it is. And if your brief does make it obvious, then leave it at that – just conclude by saying, “In sum,” or “Thus.”

Here is the simple remedy to this common problem: pick the three words you are most likely to use from the list below and ask your staff to delete or replace them using the word search function.

Habit #6: Edit for brevity.

When you edit for brevity, you can reduce your word count by up to 30%. This results in a document that is not only shorter but more muscular and therefore more persuasive.

Justice Scalia and Bryan Garner explained the importance of brevity for

legal writers: “Every word that is not a help is a hindrance because it distracts. A [reader] who realizes that a brief is wordy will skim it; one who finds a brief terse and concise will read every word.”

Strunk and White agree: “[o]mit needless words.” (Strunk & White, *Elements of Style*, Rule 13, p. 17 (1960).) But how can you achieve brevity? By eliminating text that is *unnecessary* to our argument, *redundant* of something we said before, or is *implicit* and so does not need to be expressly stated.

When should we strive for brevity? Only in the editing stage. If you worry about brevity when you are drafting, you will inhibit your creativity and stop the flow of ideas. Only when you are done with your drafting is it time for you (or someone else) to get out the red pen and edit with the sole purpose of using fewer words to say the same thing.

There is only one way to become a better legal writer – practice, practice,

practice. Hopefully, some of the above tips provide a starting point and some fun ideas on how you can improve your legal writing so you can win more often.

Ms. McGinty represents plaintiffs on appeal with a focus on affirming plaintiffs’ judgments and reversing summary judgments. She received CAOC’s 2014 Street Fighter of the Year Award and was nominated for CAOC’s 2015 Consumer Attorney of the Year Award. Follow her on Twitter @4Appeals.

Mr. Smith represents plaintiffs on appeal and is a Certified Appellate Specialist (State Bar Bd. Legal Specialization). He belongs to the California Academy of Appellate Lawyers, received CAALA’s “Appellate Lawyer of the Year” award, and was nominated for CAOC’s 2015 Consumer Attorney of the Year Award. Visit www.plaintiffappeals.com.

