



How to: Tips to whip your writing into shape

By: Nancy Crotti May 8, 2014 0

Legal writing just doesn't compare with any other type of writing. Not only does it require strict adherence to style (e.g., citations), it must be persuasive without being overwhelming.

A pair of legal writing teachers offered a number of tips to help lawyers write at their best. Marcia Miller is an associate at Sieben Grose Von Holtum & Carey in Minneapolis, where she does appellate and motion practice, usually writing for other attorneys. She also teaches legal research and writing at Hamline University School of Law.

Robert Kahn, associate professor at the University of St. Thomas School of Law is an attorney who specialized in

Social Security appeals before he began teaching legal writing 13 years ago. Each has a list of do's and don'ts.

Miller's advice:

- Pare down the issues to include only those that really need to be addressed.
- Prepare to respond to others' poor writing or research. You may have to respond to an issue that's been settled.
- Keep it simple. "There's a movement in the legal writing community to get rid of legalese words like, 'hereinafter,'" Miller said.
- Follow an outline, such as Issue > Rule > Application > Conclusion. "I find in my own writing that if I don't adhere to that, it's harder to keep it simple," Miller said.
- Don't rush the writing or assume knowledge on the judge's part. Give the judge the key ingredients to help him or her reach a conclusion.

"I have read judicial opinions where in sort of a Minnesota Nice way they will say, 'It was not clear what appellant was asking for,' or 'This was not adequately briefed,' where you can tell that they didn't like the way that this was presented," Miller said.

That's a no-no, according to Kahn, who prefers writing in the style of the Frog and Toad children's books. Kahn's rules include:

- Be concise. To learn how, get a copy of *The Elements of Style* by William Strunk Jr. and E.B. White.
- Create a road map in a thesis paragraph at the beginning of an argument and make sure you follow it.
- Cite, and do so according to local court rules. Look at a successful brief that was filed in the same court to get an idea of what the judge is like.
- Be fair to the other side. Judges don't like name-calling.
- Deal with unpleasant facts and move on.
- Avoid typographical errors, especially at the beginning of a brief, section or paragraph. They draw negative attention. "Reading it out loud is a great way to get at typos, as is reading it one sentence at a time, backwards (from the bottom up)," Kahn said.
- Figure out the best writing process for you, such as following an outline or writing in blocks of time.

- Keep a journal handy to jot notes about cases as the ideas come to you.
- Read other good writing.
- Edit your work. “Take the longest paragraph you have and ask whether it should be that long. Take the longest sentence; do the same thing,” Kahn advised. “Normally a sentence should be 25 words or less. Look for jargon, confusing language. Ask yourself, do you really need the passive voice there?”
- Have someone else edit your work, whether this person is a lawyer or not.
- Read Steven D. Stark’s Writing to Win, a concise volume of basic tips about writing briefs and other legal documents.
- Write, write and write some more. If you don’t get enough writing practice on the job, get it through pro bono work.

If you’re writing a brief in response to a motion, you have to answer each point, no matter how many or how relevant. Just don’t expect the judge to be happy.

These wordy, “kitchen sink” briefs often appear when lawyers bring post-trial motions to preserve an issue for appeal, according to Miller.

“That’s frustrating for judges,” she said. “From what I’ve heard in going to seminars and talking to judges about what works and what doesn’t work, that doesn’t work. What you really want to do is make it as clear as possible so that the judge doesn’t have to pause and think at all.”

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