

# Excellence in Legal Writing: Avoiding the Pitfalls

**By Kristen Marquis Fritz  
Thornton & Naumes LLP, Boston, MA**

**An excellent written product is the key to success** (and a poorly written product is the fastest way to lose the key). Many young attorneys begin practicing with the belief that being a good attorney is about being good at arguing on your feet, being likeable, or having a “persuasive” personality. However, while these traits are valuable during oral arguments and negotiations, so much more depends upon the written product that precedes (and sets the ground work for) those types of in-person appearances, as so much of an attorney’s practice is done in writing.

The most important tool in an attorney’s arsenal is an excellent written product, whether it is a letter to a client, court or opposing counsel, a motion, a mediation statement, or a brief. I am repeatedly shocked at the poor quality of legal briefs, unprofessional letters or emails and haphazard motions written by long-time, successful attorneys. Receiving such writings immediately sets an impression in my mind of these attorneys. Needless to say, the impression is not usually positive.

When I began writing this article, the first sentence read: “A good written product is the key to success.” However, I changed “good” to “excellent” as it truly is an excellent work product that all attorneys should seek to achieve. Obviously time and other constraints will play a part in just how excellent every piece of your writing turns out. But there should be a minimum level of excellence that you strive for in your writing. Even a great argument can get lost in a poorly written document. If you endeavor to avoid the pitfalls, your positions and arguments will be respected and taken seriously, as will you (even if your position does not ultimately succeed).

## **The Pitfalls**

### **Spelling and Grammar**

Spell check, spell check, spell check. I am continually amazed at the documents I receive with spelling errors in them. Be sure to run spell check on everything you write (including emails). Remember however, that spell check is not perfect. Certain misspellings are actual words and will not be picked up. Therefore, you still must manually review the document for spelling errors. Proper grammar is also an integral part of any written product. Incorrect grammar often results in unclear meaning. If it has been a while since you have reviewed the basic rules of grammar, make some time to do so. It will make all the difference in your writing.

### **Tone**

It is important to consider tone in all written communications. Often, the tone that we write with is not what others read. Recipients of written communications do not have the benefit of your voice intonation, your body language, or your personality. Make sure to read back to yourself what you have written from the reader’s perspective. Ask yourself if there is any possible way that what you are saying will be misconstrued by *how* you are saying it. This is particularly true with email which, for some, has become a primary means of communication and is often treated more casually than other forms of written communication. However,

email communications should be considered as professional writings and should be drafted as such. Be sure to proof-read all emails and make sure the tone is what you intend.

### **Citations**

First things first: Make sure to include citations to authority when they are necessary. When you are reviewing your document, ask yourself “who said so?” at every principle. If there is not a citation immediately following that answers that question, you probably need one. Second, be consistent with citations. Most attorneys and courts use *The Bluebook: A Uniform System of Citation* (Harvard Law Review Association, et al., 18<sup>th</sup> Ed., 2005). However, even if you don’t use *The Bluebook*, you should be sure that you are using a proper citation form and that you are using the same form consistently throughout the document. With each citation, be sure that the reader has enough information to find the reference.

### **Wordiness**

When you have lived and breathed a particular argument, you often know it inside out. It is this inner knowledge, however, that can get the best of you in your writing. Sometimes, particularly with complex arguments, it is tempting to put everything you know on paper. However, this is not always the best way to make an argument. The best method is still the K-I-S-S method; that is, “**Keep It Simple for Success.**” Review your arguments piece by piece, rather than as a whole. For each piece of the argument, ask yourself “Is this the simplest way I could make this argument?” Usually, upon review, you will discover that there are certain arguments or concepts that are repeated and that can be condensed. Oftentimes in briefs the key to simplifying an argument is to use multiple parentheticals setting forth the relevant principle rather than to discuss several cases in detail. Reviewing contracts, settlement agreements and letters with the same eye for simplicity will usually result in greater clarity.

### **Audience**

Keep your audience in mind at all times. If you are making a motion or briefing an issue to a busy judge, make sure that it is short and to the point. If you are writing a letter to a client, make sure your words and their meanings are clear to the non-legal reader.

### **Style**

Writing styles are as varied as hairstyles, clothing styles, and music tastes combined. Differing styles are to be expected and celebrated. However, make sure that you don’t include too much style in your writing. Certain people have “style habits” that permeate their writings. These include starting multiple sentences with the same introductory words (e.g., “In respect to” or my personal crutch “Clearly”) and using visual emphasis or stress throughout words (i.e., by bolding or italicizing). When reviewing your writing, check for these stylistic factors and make sure they are not too overwhelming.

**Avoiding the Pitfalls** – I hope it is clear that the key to avoiding the pitfalls is simple: Review, review, review. You should do several self-reviews of everything you write. In addition, have your peers review your writings whenever possible. View revisions as part of the process of achieving writing excellence. Take comments and criticisms from others in stride. They are not personal reflections on you or your abilities so do not take them as such. Rather, use the experience to learn and grow in your writing. In the end, you will be rewarded greatly by the success that your excellent written product will bring for you and your clients.

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