



## Trim the Fat

# Lean Writing, Powerful Results

By Jessica Goneau Scott

**T**hat many of us could trim up is as true in our legal writing as it is in our lifestyles. While clerking on the Ninth Circuit Court of Appeals, I saw the importance of using short, plain, and powerful language to grab the attention of busy judges and their clerks and of avoiding wasting critical space. Once in practice, I learned from my colleagues with decades of experience. Here are some basic and easy ways to clean up some unnecessary space-suckers.

**Don't start text on the caption page.** Leave the caption page unnumbered, insert a page break, and start numbered page 1 and your text on the page following the caption. The caption often consumes at least half of the first page of any filing; thus, by starting your text on that page, you deprive yourself of critical space.

I can hear the questions in your head now: "But doesn't that violate a rule of some sort?" "Is the court going to strike my brief for being over the page limit?" I have two answers. First, if the court rules say to include the caption in your page count, ignore this tip. Second, during the decade that I have filed motions and briefs without starting my text on the caption page, I have never had an opposing counsel complain or a court criticize, much less strike, my filing.

**Eliminate the unenlightening, introductory legalese.** Here are a couple of examples of what I mean: "This motion is supported by the following Memorandum of Points and Authorities and Separate Statement of Facts, all of which are incorporated herein by this reference," or "Comes now Defendant John A. Doe, by and through his undersigned counsel of record, and herein submits this memorandum of points and authorities in support of his motion for summary judgment." Has anyone ever seen or heard a court within the last five decades criticize, much less deny, a motion because it omits any such overly formalistic introductory remarks? I haven't. Lawyers include such language because they've seen it included in others' motions. Stop the cycle. Save your space. Use it for words that can actually help your argument.

Tell the judge in your first paragraph what you seek and why you should win. The judge should immediately conclude that the rest of your brief will not require sifting through excess and uninformative verbiage to get to your actual points.

**Use shorter and fewer words.** Why use a two- or three-syllable word when a one-syllable word will do (e.g., "purchase" instead of "buy," "inside" instead of "in," "demonstrate" instead of "show")? Why use multiple words when one will do (e.g., "prior to" or "in advance of" instead of "before," "in order to" instead of "to," "pursuant to" instead of "under," "in spite of" instead of "despite," and "in favor of" instead of "for")?

Similarly, remove superfluous words. Instead of saying, "Defendant moved the court for summary judgment," say, "Defendant moved for summary judgment"; instead of saying, "Smith filed suit against Jones," say, "Smith sued Jones." Not only does this conserve space, but it makes your writing more powerful and persuasive.

**Avoid using adjectives and adverbs as much as possible.** This tip serves three purposes, the first of which is to save space. The second is that verbs and nouns are more powerful than adjectives and adverbs, especially adverbs like "clearly" and "obviously" and "blatantly," which your court will have read perhaps 30 times in arguments made by other lawyers in other documents earlier in the day. The third is to build credibility with the court. Always remember your audience: you are not writing to a jury. Overusing adjectives and adverbs not only eats into your space and word count, but it can make you look unreasonable. If you refrain, you will build credibility and find yourself with more space for what's actually important.

**Avoid the passive voice when you can.** Using the passive voice usually takes more words than using active language, and it makes for weaker writing. Compare "Plaintiff was required by her manager to work weekends on short notice" with "Plaintiff's manager required her to work weekends on short notice." Not only is the second, active-voice sentence more effective, but it saved two words.

The passive voice can occasionally be useful. For example, when you represent Bob, saying that "Tom was hit" instead of "Bob hit Tom" leaves the hitter ambiguous and distances Bob from the action. But in most instances it is unnecessary, wastes space, and dilutes your mes-

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sage. Use it only when you have a specific purpose for doing so.

My final tip will actually cost you more words than it will save, but my point here is that you should not go too far in the right direction. Don't sacrifice clarity to save words and space, so **don't overuse acronyms**. For example, if your client is "Northern Lights Ice Hotels Conglomerates," instead of using "NLIHC," use "Northern Lights" or "Northern." Judges and clerks cannot memorize dozens of new acronyms when they must read a dozen or more briefs a day, and unfamiliar acronyms make it difficult for them to digest your brief.

Following the above tips will help you trim the useless fat from your legal writing. Short and sweet means a leaner, stronger brief. 