

WRITING IN PLAIN ENGLISH

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1. Introduction

Legal writing has a bad reputation as overly technical, verbose, and confusing. That is not the proper approach to legal writing. Writing in plain English and legal writing have the same goal: communicating complex ideas in a digestible and manageable form. As Justice Clarence Thomas once said, the “beauty is not to write a five cent idea in a ten dollar sentence” but rather “to put a ten dollar idea in a five cent sentence.”

Some arguments are so complex that they require, for example, 20 pages. But if you can deliver your argument in 10 pages rather than 20, do it in 10. Consciously trying to limit your page count will not only help you write concisely and in plain English, but it will also serve you well in the world of court pleadings with hard page limits.

2. Use the Active Voice

Writing in the active voice clearly identifies the action and the actor who is performing the action. To train yourself to use the active voice, follow the default sentence structure of:

- **subject** + verb + object.
- Passive voice: The penalty was called by the **referee**.
- Active voice: The **referee** called the penalty.

- Passive: The man was bitten by the **dog**.
- Active: The **dog** bit the man.

The active voice strengthens an argument by establishing responsibility for an action. There is no effort to hide either the subject or object of the sentence. The reader is not required to reread a sentence because it is unclear who performed an action.

In addition to creating confusion, especially in establishing the subject of the sentence, writing in the passive voice has other unintended consequences like adding length to your sentence and giving the appearance that nothing has actually occurred.

Writing in the passive voice can be appropriate if:

You are trying to avoid naming the subject because you don't want to appear confrontational.

- Passive: Mistakes were made.
- Active: [subject] made mistakes.

You are trying to avoid naming the subject because the subject is unknown.

- Passive: The jewelry was stolen last night.
- Active: [subject] stole the jewelry last night.

You are talking about a general truth.

- Passive: Every year, millions of people are entering the job market.
- Active: [subject] enter the job market every year.

You want to emphasize the object rather than the subject of the sentence.

- Passive: Insulin was discovered in 1921 by scientists. It is still widely used.
- Active: Scientists discovered insulin in 1921. It is still widely used.

Other situations may come up where the passive voice is necessary, but the vast majority of your writing should be in the active voice.

3. Don't Nominalize Your Verbs

Nominalization converts a verb into a noun, and relies on a weaker verb. It confuses the reader about who or what the subject of the sentence is and often adds length to the sentence. When you nominalize the "action" of a sentence, you conceal that action in a noun. This requires your reader to "translate" the sentence into more comprehensible elements, and thus makes your writing seem obscure.

You can often spot nominalized verbs by looking for certain endings:

- -al
 - -ment
 - -ant
 - -ence
 - -ion
 - -ent
 - -ancy
 - -ency
 - -ance
 - -ity
-
- Nominalization: There was committee **agreement**.
 - Fix: The committee **agreed**.
-
- Nominalization: Her **reporting** of the event.
 - Fix: She **reported** the event.

4. Consider Sentence Length and Avoid Run-Ons

Everybody hates run-on sentences. They can be intimidating and confusing. Consider 20 words per sentence a safe benchmark (although this is not a hard and fast rule). However, don't focus on aiming for 20 words when you write. Instead, write naturally and only consider the length in retrospect when editing. Typically, sentences can easily be broken down into smaller sentences without losing any meaning. A short, concrete sentence following a longer sentence can also be a great device for delivering a strong punch, *e.g.*, "The court could have considered the constitutional issue. It did not."

The easiest way to avoid run-on sentences (while also increasing the organization of your writing) is to stick to one main idea per sentence, with an occasional related point. With practice, you should be able to easily avoid run-on sentences without much work.

5. Simplify Your Writing and Avoid Legalese

Using complex words or phrases is often helpful in communicating an idea. But overuse can be a problem. Typical drawbacks include: (1) creating doubt in the reader's mind that you are compensating for your argument with "fancy" words and (2) confusing the reader. Often, complex words can be simplified without losing any meaning.

Examples of Complex Words Which Can Easily Be Simplified:

- aforementioned → previously stated
- utilize → use
- at the present time → now/currently
- subsequent to → after

Latin legalese is often best avoided. While these phrases are occasionally used by courts and practicing lawyers, they typically only succeed in making writing denser. Similar to the above examples, Latin legalese can often be substituted without losing meaning. However, ensure that the phrase is not so common as to be necessary, *e.g.*, *mens rea*.

Common Examples of Latin Legalese Which Can Be Replaced with English:

- *inter alia* → among other things
- *expressio unius exclusio alterius* → when one or more things of a class are expressly mentioned others of the same class are excluded
- *arguendo* → for the sake of argument

Another common form of legalese which can easily be simplified is redundant synonyms. These are a pair or string of words with similar meanings. Not only does the use of redundant synonyms take up additional space, but it may confuse the reader. While this is a good rule of thumb, beware that redundancies can sometimes be terms of art (such as in statue, contract, or common law) and should not be deleted.

Examples of Common Redundant Synonyms in Legal Writing:

- alter or change
- last will and testament
- confessed and acknowledged
- made and entered into
- convey, transfer, and set over
- order and direct
- for and during the period
- peace and quiet
- force and effect
- free and clear
- save and except
- full and complete
- suffer or permit

- true and correct

6. Avoid Compound Constructions

Compound constructions use three or four words to say what can easily be said by one or two words. Not only do they waste space, but they make writing seem dry and boring. Lawyers tend to use compound constructions rather than plain English, which is a mistake. Below is a list of common compound constructions and their simple counterparts.

Compound:

- at the point in time
- by means of
- by reason of
- by virtue of
- for the purpose of
- for the reason that
- in accordance with
- inasmuch as
- in connection with
- in favor of
- in order to
- in relation to
- in the event that
- in the nature of
- prior to
- subsequent to
- with a view to
- with reference to

Simple:

- then
- by
- because of
- by/under
- to
- because
- by/under
- since
- with/about/concerning
- for
- to
- about/concerning
- if
- like
- before
- after
- to
- about/concerning

7. Conclusion

The case before us alleges that the plaintiff was taken to the hospital by paramedics, where she underwent complicated surgery, and where she claims she obtained the infection by means of negligence. The parties are in agreement by stipulation that the only issues in this case are the surgeon's negligence and the hospital staff's negligence. The trial itself should be short as, inter alia, the plaintiff's recollection included only two witnesses. As aforementioned, damages will only be discussed subsequent to the court's ruling on these issues. Assuming,

arguendo, a verdict in favor of the plaintiff is returned by the jury, it is likely the plaintiff will receive a substantial award of damages.

Plaintiff alleges that paramedics took her to the hospital where she underwent complicated surgery and obtained an infection due to negligence. The parties stipulated that the only issues in this case are the surgeon's negligence and the hospital staff's negligence. The trial should be short as, among other things, the plaintiff recalled there only being two witnesses. As previously stated, damages will only be discussed after this court's ruling on these issues. Assuming the jury returns a verdict in favor of the plaintiff, the damages will likely be substantial.