

Top Ten (approximately) Legal Writing Mistakes

A series of horizontal lines in teal and light blue colors, some solid and some dashed, extending across the width of the slide below the title.

"It is difficult to make a
foolish argument in
plain English"

Hon. Curtis Karnow, San Francisco Superior
Court

“Good writing makes
the reader feel smart,
bad writing makes the
reader feel stupid.”

*Robert Olson, “A Few of My Favorite
Things,” verdict (4th quarter 2004),
p. 38 [attributed to Garner]*

Who's the audience?

- Judge
- Opposing party
- Your client
- Insurance carrier
- Legislative body
- The press

- 
- ✪ "The best advocacy accommodates all the judge's characteristics, needs and wants"

- *How can you make it easy for the reader?*
- *How much do they already know?*
- *How much time do they have?*
- *How much credibility do you have?*

Watch your language!

- Opposing counsel is not a ...



“Regarding your client's failure to appear once again for his continued deposition, we too regret that your client chose not to appear. ... Once again, you offer the same tired, old, and shopworn excuse. Your continued blustering about mutually agreeable dates, efficiency and promptness, and convenience is pathetic when your client's actions negate any semblance of cooperation. Talk is cheap. Actions speak louder than words. Your credibility is at stake here.”

(*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1534.)

“It's no surprise, then, that your letter of 8/7/08 appears to be an attempt to create a false and misleading exhibit for use at a later law and motion hearing so that your client can sit in court with a halo over his head, and so you can say ‘look how many times Ken offered to settle!’ That wouldn't surprise us at all, given [57] your practice of attaching a large pile of exhibits to your declarations without any testimony from you concerning their truth.”

(In re Marriage of Davenport (2011) 194 Cal.App.4th 1507.)

The opening brief accuses the trial court of committing a "whopping" miscarriage of justice, of paying "lip service" to a legally recognized distinction, and of having "plucked [numbers] out of thin air." Counsel also writes: "The trial court has no discretion to use overblown financial figures to determine spousal support. As with all computer programming, garbage in, garbage out."

(*In re Lewis* (Dec. 1, 2015, Nos. B255900 (, B258688)) 2015 Cal. App. Unpub. LEXIS 8722, at *2-3].)

The opening brief likewise asserts that Donna's expert "plucked" a number from the air and that her charge to Steve's side of the ledger was "befuddling".

The respondent's brief also contains improper remarks. It repeatedly uses the word "mantra," as if Steve had a "mantra" to avoid paying Donna. It inappropriately asserts that "Steve does not believe that the rules apply to him" and that he "is one of those people" "who takes his anger and greed beyond the bounds of reason."

We close this discussion with a reminder to counsel—all counsel, regardless of practice, regardless of age—that zealous advocacy does not equate with “attack dog” or “scorched earth”; nor does it mean lack of civility. [Citations.] Zeal and vigor in the representation of clients are commendable. So are civility, courtesy, and cooperation. They are not mutually exclusive.

(*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507.)



MELODRAMA

“In a **desperate** effort to avoid the statute of limitations, plaintiff resorts to making an **absurd** argument that ‘the liquidated damages portion of the contract continued to run.’”

Headings should **help** the reader

AN IMMEDIATE REVERSAL OR ALTERNATIVELY AN IMMEDIATE STAY PENDING APPEAL IS WARRANTED SINCE A SIMPLE REVIEW OF THE COMPLAINT, DECISION AND RELEVANT LAW (NO REVIEW OF ANY EVIDENCE IS NECESSARY) SHOWS THE BULK OF THE DECISION WAS ERRONEOUS FOR NUMEROUS REASONS INCLUDING (1) THE JUDGMENT WAS ENTERED BASED ON CLAIMS NOT EVEN PLED IN THE COMPLAINT;(2) THE LOWER COURT'S OWN DECISION STATES PLAINTIFF/RESPONDENT FAILED TO SHOW PETITIONERS' RECEIVED ANY PROCEEDS FROM THE ALLEGED FRAUDULENT CONVEYANCE, A REQUIREMENT; AND (3) THE COURT'S DECISION MAKES IT CLEAR RESPONDENT DID NOT SUFFER ANY INJURY AS A RESULT OF THE ALLEGED FRAUDULENT CONVEYANCE

Headings should make your point quickly

AN IMMEDIATE REVERSAL OR ALTERNATIVELY AN IMMEDIATE STAY PENDING APPEAL IS WARRANTED SINCE A SIMPLE REVIEW OF THE COMPLAINT, DECISION AND RELEVANT LAW (NO REVIEW OF ANY EVIDENCE IS NECESSARY) SHOWS THE BULK OF THE DECISION WAS ERRONEOUS FOR NUMEROUS REASONS INCLUDING (1) THE JUDGMENT WAS ENTERED BASED ON CLAIMS NOT EVEN PLED IN THE COMPLAINT;(2) THE LOWER COURT'S OWN DECISION STATES PLAINTIFF/RESPONDENT FAILED TO SHOW PETITIONERS' RECEIVED ANY PROCEEDS FROM THE ALLEGED FRAUDULENT CONVEYANCE, A REQUIREMENT; AND (3) THE COURT'S DECISION MAKES IT CLEAR RESPONDENT DID NOT SUFFER ANY INJURY AS A RESULT OF THE ALLEGED FRAUDULENT CONVEYANCE.

Navigation

pompo

Click the arrows to continue your search

1. Watch Your Tone

- Avoid name-calling
 - On occasion, it leads to sanctions:
 - Some words are just disguised name-c...
 - Excessively emotional writing often diminis...
 - Using consistent names and terms throug...

2. Organize Your Document

- Prepare table of contents as you go along...
 - The table of contents provides a road ...
 - Using navigation map feature in Word or ...
 - Make clear in the introductory paragraph ...
- Body
 - Use signpost words
 - Put citations in text, not footnotes
- Paragraphs
 - Topic sentences of each paragraph sh...

3. Choose the Right Words

- Use specific words rather than general
- Use the correct word

- ## 2. Organize Your Document
- Prepare table of contents as you go along and change it as necessary
 - The table of contents provides a road map to your document and may be all that a busy reader has time to digest
 - Under the References tab in Word
 - Under Tools/References in WordPerfect
 - Using navigation map feature in Word or document map feature in WordPerfect to reorganize the outline as you write
 - Make clear in the introductory paragraph what you want and why you are entitled to it
 - Body
 - Use signpost words

Acronym overdose

The trial court premised its UCL ruling on the “unlawful” prong in Business and Professions Code §17200, finding that the administrative fee authorized in the SHA agreed to be a charge of 1% imposed in 1995 and 1995 and then the difference between the actual pro-rata pass through cost of premiums and the amounts deducted by RWA from its contractors’ compensation in years 1997-2009 under two different contracts constituted a sale of insurance requiring a license from the Department of Insurance.

“ ... the **use of acronyms** tends to obscure, certainly in the reader's mind and sometimes even in the writer's, the underlying reality of a case, and the legal issues on which it must turn. For example, the case before us essentially revolves around two words widely used in federal and state air pollution control statutes, “available,” and “achievable.” But when the words are incorporated into the widely used acronyms “BACT”—for “best available control technology” or “BARCT”—for “best available retrofit control technology”—their full significance is obscured. “BACT” and “BARCT” take on a life of their own, severed from the actual statutory language.

Do not fail to omit uninformative
negatives



Appellant is not, on appeal, challenging the finding that there was not sufficient oversight of the third party operator by the USA to invalidate the independent contractor exception

When does "until" begin? Here we conclude it begins when "when" begins.

In re Marriage of Schu (2014) 231
Cal.App.4th 394



It is required by the court
that you respond to this
motion within five days.

The court requires that
you respond to this
motion within five days.

- The short of it is that we cannot find, assuming the truth of all credible evidence on the issue of malice and of all inferences fairly deducible therefrom, and considering them in the light most favorable to Sindorf, that they lead to the conclusions, from which reasonable minds could not differ, that Fridkis, and through him, Jacron, did not abuse the privilege to defame by excessive publication or by use of the occasion for an improper purpose, or by lack of grounds for belief in the truth of what was said.

A petition for a writ of prohibition, predicated upon the ground that the indictment was found without reasonable or probable cause or that the defendant had been committed on an information without reasonable or probable cause, or that the court abused its discretion in utilizing the procedure set out in subdivision (b) of Section 995a, must be filed in the appellate court within 15 days after a motion made under Section 995 to set aside the indictment on the ground that the defendant has been indicted without reasonable or probable cause or that the defendant had been committed on an information without reasonable or probable cause, has been denied by the trial court.

Sans Serif

Serif

A diagram illustrating the relationship between Sans Serif and Serif font styles. The words "Sans Serif" are written in a black sans-serif font at the top, and the word "Serif" is written in a black serif font below it. Four red circles are placed at the top-left of the 'S' in "Sans", the top-right of the 'f' in "Serif", the bottom-left of the 'S' in "Serif", and the bottom-right of the 'f' in "Serif". Red lines connect the top-left circle to the bottom-left circle, and the top-right circle to the bottom-right circle, forming a triangle that points downwards from "Sans Serif" to "Serif".

Times New Roman (1932)

The  Times

LONDON, WEDNESDAY, SEPTEMBER 29, 1932

THE



TIMES

LONDON MONDAY OCTOBER 3 1932

EFGHIJKLMNOPQRSTUVWXYZ
ghijklmnopqrstuvwxyz

Condensed = more text per page

This sentence is printed in Times New Roman.

This sentence is printed in Century.

This sentence is printed in Georgia.

Questions???

Suggestions???

Top Ten (approximately) Legal Writing Mistakes



Thanks for your patience