

# Tips for Writing Less Like a Lawyer

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Upon entering the profession, too many lawyers start imitating the worst writing they saw in law-school casebooks and law journals. This, they imagine, is the kind of dense, dreary prose that lawyers are supposed to write. In working with new lawyers over the past three decades, I've compiled this list of tips and other admonitions — many of them familiar to anyone who cares about legal writing. Their goal is to turn new lawyers around before bad writing becomes habitual.

1. **Empathize.** Put yourself in the reader's shoes. Sensitivity to the reader animates every other rule of effective writing. Your objective is to lead the reader through the problem, step by step.
2. **Make your writing self-contained.** The reader should not feel the need to look at the statute or read the cases to understand your analysis. Bare citations are rarely enough. Draw from the statute or case what is significant (and only what is significant). Quote the crucial language. Don't let the reader wonder what the case is about.
3. **Draw parallels.** As you develop the authorities, draw the parallels explicitly. Don't leave it to the reader to figure out how the case helps or hurts.
4. **Face weaknesses openly.** Don't ignore the soft spots in your analysis. What adverse authorities will your opponent cite? How can your cases be distinguished? How will your opponent read the statute? Frame your arguments with the anticipated response in mind. If there is bad news, deliver it yourself

and place it in the most favorable context. Don't risk your credibility by letting the other side offer up a surprise.

5. **Provide road maps.** Transitions should be neither abrupt nor obscure. Tell the reader how one topic follows from the last and leads to the next. The flow should be gradual; the analytical links should be explicit.
6. **Use examples.** You can breathe life into abstract principles by illustrating your point.
7. **Always start with the basics.** Spell out the regulatory context, the key statutory phrase, the central legal or practical problem. Even a sophisticated reader will be comforted by your retracing a familiar path.
8. **Don't expect too much of the reader.** Write with the assumption — which is almost always accurate — that you have thought far more about the problem than your reader has. Your writing will be better even if the assumption is wrong.
9. **Rewrite.** Be your own toughest critic. You've never written a draft that couldn't be improved.
10. **Make your logic explicit.** Put down on paper every analytical step you have taken in your head. Be vigilant about this. Take no shortcuts. Leave no gaps.
11. **Care about style.** Style cannot be divorced from substance. If it can be said better, say it better. It is not enough to have good ideas, not enough to get your good ideas down on paper. You have to express those ideas effectively.

12. Don't skip over the rough spots. You know where they are. Force yourself to rework the bumpy sentence, the awkward paragraph, the loose analysis.
13. Don't write an abstract thesis. Apply the law to the facts at hand. Solve the problem.
14. Don't limit yourself to direct authority. Good advocacy and effective counseling are driven by analogies.
15. Logic is more important than authority. If you have a compelling argument but can't find support for it, make the argument anyway.
16. Pay attention to detail. Don't underestimate the importance of grammar, spelling, citation form, general aesthetics. Sloppy work suggests a disorganized mind. Careless mistakes not only distract and irritate a reader but may undermine her trust in you.
17. Use subheadings liberally. Good subheadings give the reader cues that aid comprehension. They can help make a long brief digestible. They can also assist the writer by exposing organizational weaknesses. If you can't frame a good subheading, you may have jumbled ideas that should be treated separately.
18. Omit superfluous details. Ask yourself whether a reader needs a particular fact or detail to understand the problem or the analysis. Editing out what isn't necessary will strengthen your writing. Be particularly brutal in striking out dates and numbers. Each conveys the impression that it has special significance.
  - If a number is unnecessary, leave it out. If it must be included, use a round number unless a more precise one is crucial. "\$37 million" is far easier to absorb than

“\$37,000,000” or (even worse) “\$37,468,139.27.” Don’t distract and tire the reader with pointless precision.

- If a date is not pivotal, leave it out. When you tell a story, all that usually matters is the sequence of events. That can be conveyed by the order of the sentences, occasionally supplemented by a cue word such as “then,” “subsequently,” or “meanwhile.” If you must use a date, keep it as general as you can: try “a year later,” or “in 1997,” or even “in March 1997,” any of which is preferable to “on March 14, 1997.”
19. Use short paragraphs. Two or three paragraphs per typed page are about right. Don’t be afraid to use one-sentence paragraphs where they seem to work. Paragraph breaks are like breaths of air. They make your writing more hospitable to the reader.
  20. Use short sentences. The simple, declaratory sentence should be the staple of your writing. Compound and complex sentences should be used for variety.
  21. Don’t try to jam too many thoughts into one sentence. If you have more than one connecting word — “although,” “if,” “because,” “and,” “but” — you should probably break the sentence into two or three shorter ones.
  22. Minimize footnotes.
    - Footnotes interrupt the flow of your writing and impede communication. They ask the reader not only to drop his eyes to the bottom of the page, but also to absorb information that the writer did not consider important enough to include in the text.

- Use footnotes only for essential material that would be more disruptive in the text than in a footnote.
- Place footnotes at the most obvious break points. The end of a paragraph is the best possible spot; the end of a sentence is second best. If you must place a footnote in the middle of a sentence, put it where there is a natural break — for example, at a comma or a semicolon.

### 23. Eliminate unnecessary words.

- Avoid adverbs such as “very,” “clearly,” “plainly,” and “extremely.” They weaken rather than strengthen. In place of “very strong,” just say “strong.” Or try substituting a vigorous adjective such as “powerful.”
- Don’t hide behind weasel words like “fairly,” “rather,” and “somewhat.” You will inspire greater confidence if you omit needless qualifiers.

### 24. Avoid legal-sounding words and phrases. Good lawyers don’t sound like lawyers.

- Stay away from Latin phrases like “inter alia” and “vel non.” They communicate little and impress no one.
- Don’t let Latin abbreviations infect your writing. In place of “i.e.,” “e.g.,” and “viz.,” substitute “that is,” “for example,” and “namely.”
- Whip yourself if you find “above-mentioned” or its relatives in anything you’ve written. Administer similar punishment for “hereinafter,” “heretofore,” and all the other words that lawyers have invented to scare the lay public.

- Don't use a big word when a small one will do. Use "city" instead of "metropolis," "get" instead of "obtain," "have" instead of "possess," and "give" instead of "bequeath."
  - In general, use language that a nonlawyer member of your family can understand. Avoid language that would subject you to ridicule if you were to use it in a personal letter.
25. Don't write in law review style. Be practical, not academic. Cryptic citations do not advance the analysis.
26. Be sparing in your use of parentheticals. They disrupt your rhythm and make for hard reading. It is usually better to characterize the case in front of, not behind, the citation.
27. Don't pile on the cases. Pick the one or two most potent authorities and develop them fully and compactly. Adding weaker authorities dilutes rather than strengthens your argument.
28. Don't paraphrase critical language. Tell the reader precisely what the legislature or the court said.
29. Minimize the use of long block quotations.
- It is rarely necessary to give the reader the entire quotation. You should do the hard work of extracting the key sentences or phrases and weave them into your own text with quotation marks.
  - If you must use a block quotation, tell the reader why she is being asked to wade through it. Otherwise, her eye is likely to skip right over the quotation.

30. Use underscoring or italics conservatively.

- Typographical emphasis in text is the equivalent of shouting. Use it only where truly necessary to aid comprehension. When you edit your work, take out as much of the underscoring or italics as you can.
- In quotations, underscoring can sometimes be helpful in drawing the reader's attention to the key language. But ask yourself whether the rest of the quotation is essential. If not, paraphrase it, and draw attention to the important material by making it the only part that is quoted.

31. Avoid computer jargon. "Input" and "interface" have crept into casual discourse. Don't let them infiltrate your legal prose.

32. If you must use technical terms, define them.

33. Avoid unpronounceable acronyms.

- There are some obvious exceptions: "IRS," "FBI," "FCC," "FOIA," "NAACP."
- If you need a short handle for "The National Committee for the Protection and Promotion of Free Market Economic Principles," don't use "NCPPFMEP." That is a false economy. Though it takes up less space than the full name, the reader's eye stops at each letter, and the acronym conveys nothing that any normal person can remember. A much better alternative is "the Committee" or "the National Committee" or the "the Free Market Committee." For the "Telecommunications Act of 1996," use "1996 Act" or "Telecom Act," not "TA."
- Tell the reader what shortened name you will use only when necessary to avoid confusion. There is ordinarily no

need, for example, to say “Federal Communications Commission (‘FCC’ or ‘Commission’).” No one will wonder what “FCC” or “Commission” refers to.

34. Use pinpoint citations. Letting the reader know which page to look at not only will save her time but also will inspire confidence in your analysis.
35. Be alert to sexist terminology.
  - “He or she” and “his or her” are acceptable alternatives to “he” and “his.” “He/she,” “his/her,” “s/he,” and all other similar mutations are out of bounds.
  - In some situations, a succession of “he or she” phrases can be cumbersome. Try rewriting the sentence to eliminate the need for a pronoun, or use a plural noun and a plural pronoun. Or try alternating “she” and “he” as I have done here.
  - Under no circumstances is it permissible to mix a plural pronoun with a singular noun. Everyone can choose his or her (not their) own solution to the problem, so long as it does no violence to the fundamental rules of grammar.
36. Keep good resources at hand. Read and reread Strunk & White’s *The Elements of Style*. For a desktop bible on writing rules, invest in Bryan A. Garner’s *A Dictionary of Modern Legal Usage* (2d ed. 1995). For an excellent thesaurus, try Rodale’s *Synonym Finder* (Warner Books ed. 1978).
37. Write with flair. Don’t be afraid to use colorful, vigorous language. Legal writing doesn’t have to be deadly.