



THE Scrivener

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In the Limelight

John G. Browning, a partner at Spencer Fane in Plano, Texas, and a visiting associate professor of law at Faulkner University in Montgomery, Alabama, received the **2022 Luther (Luke) H. Soules III Award for Outstanding Service to the Practice of Law** from the Litigation Section of the State Bar of Texas.



Each year, the award is given to an attorney “who embodies excellence in the practice of law and exemplary service to the State Bar.” Specifically, award recipients are selected for demonstrating outstanding professionalism, “commitment to equal justice under the law,” and conduct that “promot[es] the rule of law” and for making “one or more significant contributions to the community as a result of legal representation or service to the State Bar.”

Annual CLE Webinar

In October, Scribes will hold its annual CLE webinar. Titled “**No Laughing Matter: Pop Culture and Humor in Judicial Opinions**,” this year’s webinar will be moderated by Scribes vice president **John G. Browning**. The panelists will be **James C. Ho**, a judge in the U.S. Court of Appeals for the Fifth Circuit; **John B. Owens**, a judge in the U.S. Court of Appeals for the Ninth Circuit; **Tessa L. Dysart**, a professor at the University of Arizona College of Law; **Jason P. Steed**, a lawyer at Kilpatrick Townsend in Texas; and **Chad Baruch**, a lawyer at Johnston Tobey Baruch in Texas. The webinar will be [recorded](#) for those unable to attend live.

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Submissions—Please send items for upcoming issues of *The Scrivener* to scribeslegalwriters@gmail.com.

Did You Know: Selected Scribes Writing Tips

From 2013 to 2022, lawyer and author **Ann Taylor Schwing** prepared more than 100 writing tips, addressing topics such as word choice, plain language, concision, consistency, headings, and proofreading. Over the years, the tips were emailed to Scribes members, and a number of the tips are also available on the Scribes website page titled [Selected Scribes Writing Tips](#). These tips are worth repeating, so we're reproducing four of them here.

The Process of Starting to Write

A quote perhaps most often attributed to Mary Heaton Vorse states: "The art of writing is the art of applying the seat of the pants to the seat of the chair." So it is. If you don't start, you will never finish.

What do you need to write what you want to write? A cup of tea, your notes on relevant statutes, the phone on mute, your office door closed, a warmer jacket-whatever it is, get it done before you try to start. All of these things are distractions that consume part of your mind. Turn off the radio and TV and all similar distractions. If you are writing for a client and charging time by the hour, the client is entitled to have all your attention focused on the client's issue.

The most important thing you need is an understanding of the substance you intend to convey. Start often with the statement of facts; learn the facts as you write. If you don't understand your subject, you cannot write successfully about it. On the other hand, you need not understand every aspect. Collateral subjects-burden of proof, admissibility of evidence, timeliness, sometimes even jurisdiction, boilerplate clauses, and others-can be written first, interspersed with the main subject, or written last. Someone having

trouble getting started on the main subject can often start with one or more collateral subjects and create time for background thinking on the main issues.

If all else fails, make a list: all the possible causes of action, all the defenses, all the reasons the deal can or can't be structured a particular way, all the safeguards your client needs (liens, personal guarantees, letter of credit, and so on). Even if you are not ready to address the main subject, there should be something on the list that you can tackle.

Paraphrases Versus Block Quotes

Every moderately extended discussion of a case, statute, or other writing leads to the question whether to paraphrase the significant parts or to present them as block quotes. Both options have advantages, as the paraphrase can be shorter and can include explanatory material not in the quote, while the quote is what the source document actually says, avoiding issues about the accuracy of the paraphrase.

This is a choice that must be made repeatedly. The default should be a paraphrase based on the ease of reading and the ability to omit irrelevant points while adding material not in the quote. Many people find block quotes very hard to read and simply skip them altogether.

Short, Clear Sentences

The National Archives, which publishes the Federal Register, speaks to the improvement of legal writing in the U.S. <https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html>. One point we could all take to heart is the importance of short sentences to clear writing.

Write short sentences. Readable sentences are simple, active, affirmative, and declarative.

The more a sentence deviates from this structure, the harder the sentence is to understand.

Long, run-on sentences are a basic weakness in legal documents.

Legal documents often contain conditions which result in complex sentences with many clauses.

The more complex the sentence, the greater the possibility for difficulty in determining the intended meaning of the sentence.

Solutions

- State one thing and only one thing in each sentence.
- Divide long sentences into two or three short sentences.
- Remove all unnecessary words. Strive for a simple sentence with a subject and verb. Eliminate unnecessary modifiers.
- If only one or two simple conditions must be met before a rule applies, state the conditions first and then state the rule.
- If two or more complex conditions must be met before a rule applies, state the rule first and then state the conditions.
- If several conditions or subordinate provisions must be met before a rule applies, use a list.

Proofreading

Careful proofing is as important as excellent writing. Errors and omissions slip into documents so easily. There are many good

tips for proofing your work, all best employed a day or more after you wrote it.

- Print and proof the document in hard copy.
- Read the document aloud, forcing yourself to acknowledge each word, or read with your finger pointing at each word.
- Never try to proof for everything at once—proof the text, then the headings, then the caption and ending.
- Proof separately for any attachments, exhibits, appendices, or other separate matters that need to be with the document—are they there, are the numbers correct, is each what the text says it is?
- Do the math—if the document contains any calculations, do them again; add up the columns; do the subtraction; be sure the numbers are correct.
- Check proper names, company names, addresses, and the like. Be especially sure the names of the judge and your client are spelled correctly. Judge MacBride does not appreciate being identified as Judge McBride.
- If you make a recurrent type of error, search for it separately. You may be able to have the computer spellchecker catch many types of errors, such as pubic for public and trail for trial, by removing the word that is likely to be undesirable from the dictionary.
- Don't trust the auto-correct dictionary. For several years, for example, the dictionary in one major word processor automatically corrected "tortious" into "tortuous."