

GOOD LEGAL WRITING – A SHORT PRIMER FOR LAWYERS

Last week I received an email from an associate with an attachment – a one page letter to adverse counsel. The email was one sentence: “Is this okay to send?” Here are the first two lines of the attached letter, word for word, the punctuation as it was in the letter:

This letter hereby rejects your notice of EBT dated March 23, 2007 of the father of my client scheduled for August 23, 2007. I admit I had a good laugh when I opened it considering we spoke just last week and you told me you were looking to get me a date for your clients deposition that you had previously requested to be adjourned.

Yes, that was actually written by a lawyer. I still can’t read it without cringing. Unfortunately, the same can be said about much of what we write. It doesn’t have to be that way. In fact, as lawyers, language is perhaps our most important tool. The clearer, more concisely we write the better off we’ll be. Here then, are a few tips gleaned from a few years attempting to do just that:

- Know your audience. For lawyers this means really thinking about who is going to be reading your writing. If you’re making or opposing a motion in a busy New York City trial court and draft a 30-page brief, don’t expect it will be read. Conversely, if you’re submitting papers to a Federal District Court it ought to be perfect because the Judge – and her law assistant – will read every word.
- As Thomas Jefferson said, “[t]he most valuable of talents is that of never using two words when one will do.” In other words, cut the fat.
- Don’t use “then” when you mean “than.” This is one of the most common – and awful – mistakes I’ve seen over the years. “Then” refers to a point in time. “Than” refers to a choice, or “as opposed to.” Thus, “I’d rather watch TV than do chores,” or “I then decided I’d better get to work.” The two words cannot be used interchangeably.
- Use apostrophes appropriately. Just because a word ends in “s” doesn’t mean an apostrophe precedes the “s.” Thus, serving more than one subpoena does not make the word “subpoena’s.”
- A corollary to the previous rule is learning the appropriate uses of “it’s” and “its.” “It’s” is the contraction for “it is.” “Its” shows possession and has no apostrophe. So we would write “it’s a good case” or “the defendant is responsible for the acts of its contractors,” but never, for example, “the defendant is responsible for the acts of it’s contractors.”
- Finally, consider your font/formatting. Steve Jobs and Bill Gates have spent dozens of years and billions of dollars designing fonts that don’t look like they’ve come out of a ‘60s-era typewriter. So why would anyone use Courier? Or not fully justify margins? Arial may seem a bit informal for some legal documents, but certainly Times New Roman or Garamond is preferable to a document that looks like it just came out of an IBM Selectric.

This certainly isn’t meant to be an exhaustive review of legal writing or the epitome of clarity – just some food for thought.