

The background is a textured, aged parchment paper with a yellowish-tan hue. It is covered with numerous black ink splatters and dots of varying sizes, most concentrated on the left side, creating a sense of historical or legal authenticity.

“In Forma Paperis”
A Guide to Unobjectionable
Legal Writing

Writing for the 21st Century

I. Why?

- IT'S TIME!
- Stand out from your competition
- Write better → win more
- Win more → better reputation
- Better rep → more clients
- More clients → more money

Stats

11th Circuit (2016)

- 7,553 appeals (4,724 on merits)
- 3,138 affirmed
- 342 dismissed
- **561 reversed (7.7%!)**
- 12 remanded

Stats cont'd

Alabama Court of Criminal Appeals (FY2016)

- 1,254 total appeals
- 798 affirmed
- 369 dismissed
- **66 reversed and remanded (3.9%)**
- 2 reversed and rendered (.12%)
- 4 affirmed/ reversed (.24%)

Punctuate this:

“Woman without her man is nothing”

Woman, without her man, is nothing.

OR

Woman: without her, man is nothing.

II. Eschew Obfuscation

No more legalese! No more jargon! Simplify!

- Consider your audience
- Live in the present
- Simplify your language
 - Write succinctly
 - Don't try to sound smart

Consider Your Audience

Justices of the appellate courts are NOT impressed with legalese!

Remember, you have 4 audiences:

- Law clerks (smart but inexperienced)
- Judges (experienced but not specialized)
- Opposing counsel
- Clients

Live in the Present

“COMES NOW, the Defendant John Smith, by and through the undersigned counsel, and hereby respectfully requests this Honorable Court set this matter for a pre-trial immunity hearing in order to determine whether the defendant is immune from criminal prosecution pursuant to §13A-3-23, Ala. Code (1975). As grounds in support thereof, the Defendant avers the following:”

Better

“Under §13A-3-23(d), *Code of Alabama, 1975*, Defendant John Smith requests this Honorable Court grant him a pre-trial evidentiary hearing to determine whether the defendant is immune from criminal prosecution. The defendant additionally requests that at the conclusion of the evidentiary hearing, this court dismiss the action against him for the following reasons:”

Jargon

“That under Alabama law the Plaintiffs were present at the July 23, 2010 meeting of the Board of Directors meeting of the Research Institute and voted, along with the other members present, each one, independently, each with full capacity, total and complete knowledge of the agenda which was set during the executive meeting at the Board of Directors meeting that previously occurred during executive session, which was arranged by and through Dr. X, on June 14, 2010.”

Simplify

Revised:

“With full understanding of the agenda created at the executive meeting held on June 14, 2010, the plaintiffs knowingly and willingly voted at the Board of Directors meeting on July 23, 2010.”

OR

“On June 14, 2010, the plaintiffs attended an executive meeting arranged by Dr. X and there they established an agenda for the subsequent Board of Directors meeting. On July 23, 2010, the plaintiffs voted with full knowledge and understanding of the issues.”

Words of Doom

(see handout)

III. Style/ Grammar:

How does the document look?

- The first-glance appearance of the document is the reader's first impression of YOU. If it looks disorganized, the reader assumes YOU are disorganized. This can result in the reader favoring your opponent.
- Make sure page references and citations match up! (judges DO look up your citations)
- Consider margins, spacing, and font
- Do not unnecessarily **bold**, *italicize*, or underline

Use Proper Citations

- Blue Book
- ALWD Citation Manual
- Cite EVERYTHING! It is not the court's job to determine if your argument is supported by law. Supporting your argument with law will automatically bolster your position.

The Footnote Debate

- Neither the 11th Circuit nor Alabama Courts of Appeal prefer textual footnotes. If the information is important, put it in the body of the brief.
- Both courts are also inclined against citing authority in footnotes. It is considered disruptive to the flow of the brief.
- NOTE: I have found that other courts in the U.S. feel the opposite about footnotes. Do what is preferred in the court for which you are writing.

A Formula That Works

- Sentence 1: The main point of your paragraph or subsection.
- Sentence 2: Supporting statement or argument; more narrow
- Sentence 3: Cite law
- Sentence 4: Explain the applicability of the law to your case
- Repeat
- Last sentence: Draw a conclusion; transition to the next paragraph or subsection

Support Your Argument

- Be honest about the opposing stance to your claim. Don't overstate or hide the rule of your case. The courts of appeal DO check your citations
- What do you do when case law directly undermines your argument?
 - 1. Forestall the opposing argument
 - 2. Distinguish your case
 - 3. Explain why case law is due to be changed or does not apply.
- Regardless, you **MUST** support your case with law

Support Your Argument, continued

“We have stated that it is not the function of this court to do a party’s legal research. See *Henderson [v. Alabama A & M University]*, 483 So. 2d [392,] 392 [(Ala. 1986)]. Similarly, we cannot create legal arguments for a party based on undelineated general propositions unsupported by authority or argument. Ala. R. App. P 28 (a)(5)[now Rule 28(a)(10), Ala. R. App. P.]...”

(*Spradlin v. Spradlin*, 601 So. 2d 76, 78-79 (Ala. 1992))

Avoid redundancy. In other words, don't be redundant

- “In other words...”

If you have to re-explain yourself, you are admitting that what you wrote is unclear or difficult to comprehend. Furthermore, “in other words” tells the reader that you are about to repeat yourself. This is a no-no.

- More examples:
 - “variety of different”
 - “a constitutional right under the Constitution”

Write an Actual Sentence

○ Fragments

- Lacking a subject OR
- Lacking a verb

○ Run-ons

- Comma splices (joining two independent clauses with merely a comma)
- The “run-on fragment” – clause after clause without a verb

EXAMPLES

“That this Honorable Court after having read the same set this case after one continuance that was requested by the Plaintiff for a hearing on November 4, 2011.”

HOW ABOUT...

“This Honorable Court granted the plaintiff’s continuance and set this matter for a hearing on November 4, 2011.”

Headings

Be Clear and Succinct! In one sentence, state the facts and law.

- Poor: “The Madison County Department of Human Resources erroneously found the defendant to be unfit as a parent, and as a result, the finding of dependency by the trial court is incorrect and warrants a reversal.”
- Corrected: “The Madison County Department of Human Resources failed to show by clear and convincing evidence that the father was unable and unwilling to discharge his parenting responsibilities.”

The Worst Heading

Woods Failed To Preserve For Review His Claim That The Trial Court Abused Its Discretion When It Allowed Into Evidence Comments And Statements, Not The Result Of Questioning By Law Enforcement, Made By Woods During The Traffic Stop And His Subsequent Arrest, When He Did Not Object To The Testimony When It Was Offered At Trial; Further, Even If Properly Preserved, The Evidence Was Relevant And Admissible To Show Woods's Demeanor And Behavior During The Traffic Stop, Evidencing His Intoxication, And To Present To The Jury All The Facts And Circumstances Surrounding The Traffic Stop And Woods's Arrest;

It keeps going...

- Moreover, The Complained-of Prejudicial Evidence Was Harmless When Woods Himself Elicited During Cross-examination Of The Arresting Officer Additional, Similar Comments Made By Woods During The Traffic Stop And His Arret That Were Not Presented By The State During Its Case-in-chief

Headings, continued:

BIGGEST ERROR??

not having a heading at all!

One of the most common deficiencies found by Justice Woodall of the Alabama Supreme Court is the lack of any heading or subsection under “Argument” in the brief.

Capitalize Properly

- **Plaintiff, Defendant, Judge, or any other party designation:**
Only capitalize these words when they begin a sentence, when they function as a title, or when referring to parties as the subject
 - Incorrect: “Britney Spears, the Defendant, injured Justin Timberlake, the Plaintiff.”
 - Correct: “Defendant Britney Spears injured Plaintiff Justin Timberlake.”
 - Correct: “Defendant injured Plaintiff.”
 - Correct: “The judge has already granted five continuances.”

Capitalize Properly, continued

- **Court:** Capitalize “Court” when naming any court in full, when referring to the U.S. Supreme Court, or when referring to the court receiving that particular document.
- Incorrect: “Lindsay Lohan is required to appear in Court on Monday.”
- Correct: “This Court has already ruled on Lohan’s Motion to Dismiss.”
- Correct: “The court in *Lohan* erroneously granted a fifth continuance.”
- Correct: “The California Supreme Court should have reversed the trial court’s ruling.”

Watch Your Tone!

- Hyperbole (exaggeration)
 - “always,” “never,” etc.
 - “The plaintiff’s action has been brought as a personal attack on him, his integrity, his history of service, and his desire to serve the community.”
 - Remember, a lawsuit is not an attack on you!
- Colloquialisms, idioms, figures of speech
 - “Due to the fact that”
 - “The defendant had not been given adequate notice to prepare for that motion and believe he had been blind sided by the cross-claim plaintiffs at that time.”

Capture the Reader's Attention

- Tell a Story!!!
- Remember your audience. Their time is limited!
- Write in plain English
- No one wants to see this from a judge:

“Plaintiff’s counsel, apparently laboring under the impression that I am not dealing with a full deck and that my knowledge of diversity requirements is able equal to that of a low-grade moron, chose to disregard the directional signals posted in my memorandum. Counsel brazenly, discourteously, defiantly, arrogantly, insultingly and under the circumstances rather obtusely threw back into my face the very allegations I had held insufficient by reiterating and incorporating those same crippled paragraphs... I suppose I can hardly expect any more from counsel whose familiarity with Title 28 U.S.C. § 1332 could be no more than a friendly wave from a distance visible only through a powerful telescope.”

Margins, Spacing, and Font

- Justify margins, one inch
- Limit “white space”
- One space v. two spaces
- Stop using Times New Roman

The Great Font Debate

- Read “On Fonts: Why Lawyers Should Switch To Century Schoolbook”
 - Times New Roman is just status quo. It’s the “absence of a font choice. It’s the beige of fonts.”
 - Century family fonts is a common favorite among legal writers. It’s readable and confident.
 - U.S. Courts of Appeals have endorsed this font.

Emphasize Sparingly

- Limit use of emphasis in writing.
- Too much gives the appearance of shouting, and it numbs the reader
- It can have the effect of actually drawing attention away from your point
- Either underline, bold, or italicize. Most readers prefer italics.

Additional Resources

- Anything written by Bryan Garner
- #AppellateTwitter
- @Legalwritingpro
- Brief Catch
- Alabama State Law Library

Or...Contact Me

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