The Attorney Toolkit

By

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About Ross Guberman

ROSS GUBERMAN is the president of Legal Writing Pro LLC and the founder of BriefCatch LLC. From Alaska and Hawaii to Paris and Hong Kong, Ross has conducted thousands of workshops on three continents for prominent law firms, judges, agencies, corporations, and associations. His workshops are among the highest rated in the world of professional legal education.

Ross holds degrees from Yale, the Sorbonne, and the University of Chicago Law School.

Ross's Point Made: How to Write Like the Nation's Top Advocates is an Amazon bestseller that reviewers have praised as "a tour de force" and "a must for the library of veteran litigators." Ross also wrote Point Taken: How to Write Like the World's Best Judges, which Court Review called "the best book . . . by far . . . about judicial writing." He coauthored Deal Struck: The World's Best Drafting Tips with Gary Karl and created the online contract editor ContractCatch.

Ross's newest product, BriefCatch, is a first-of-its-kind editing add-in. Its devoted users include lawyers and law firms, judges and courts, and corporations around the world. BriefCatch was named one of TechnoLawyer's Top 10 Products of 2019.

An active member of the bar and a former attorney at a top law firm, Ross has also worked as a translator, professional musician, and award-winning journalist. *Slate* called his investigative reporting about Fannie Mae "totally brilliant and prescient," and Pulitzer Prize–winner Gretchen Morgenson wrote that his article "made even the most jaded Washingtonian take note."

For nearly a decade, Ross has been invited to train all new federal judges on opinion writing. He has presented at many other judicial conferences and for the Association for Training and Development, the Professional Development Consortium, the Appellate Judges Education Institute, and the Corporate Counsel Summit, among others.

Ross is a founding "Trusted Adviser" for the Professional Development Consortium and consults for Caren Stacy's OnRamp Fellowship. He is often quoted in such publications as the *New York Times* and *American Lawyer*.

Ross won the Legal Writing Institute's 2016 Golden Pen award for making "an extraordinary contribution to the cause of good legal writing." He was also honored as one of the 2016 Fastcase 50 for legal innovators, and his feed has been named to the ABA's Best Law Twitter list.

A Minnesota native, Ross lives with his wife and two children outside Washington, DC. Family travel has taken them everywhere from Argentina and Bhutan to Greenland and Zambia.

Contents

Models

Model Brief

A model brief focuses on the judge's likely concerns and concisely marshals authority to explain why the law supports the result you want.

I've included below a revised version of a section from Paula Jones's summary-judgment opposition in *Jones v. Clinton*.

Original	Revision
2. The Essential Elements of Plaintiff's Claim Under Section 1983 Are Not the Same as Those of a Claim Under Title VII and Do Not Include Proof of Tangible Job Detriment	**2. As a Section 1983 Plaintiff, Jones Need Not Prove Tangible Job Detriment**[1]
Even as to the "sexual harassment" form of gender-based discrimination, "tangible job detriment" is *not* an essential element of proof in an action under Section 1983 for denial of equal protection rights. Mr. Clinton's argument incorrectly assumes that every essential element of a sexual-harassment claim under Title VII is also an essential element of a sexual-harassment claim under Section 1983. This argument reflects a basic misunderstanding both of equal protection law (as explained in this section) and of Title VII (as explained in the following section).	Under Jones's Section 1983 equal-protection action, she must prove intentional discrimination but not "tangible job detriment," so the President cannot obtain summary judgment by claiming that he did not adversely affect her job status under Title VII.[2] In arguing otherwise, the President confuses a constitutional claim for a statutory one.
In *Bohen v. City of East Chicago*, 799 F.2d 1180 (7th Cir. 1986), the court contrasted a claim of sexual harassment under the equal protection clause with a claim of sexual	The federal courts have long distinguished Section 1983 claims such as Jones's from Title VII claims. Under Section 1983, "[t]he ultimate inquiry is whether

[1] A good heading is self-contained and mixes law and fact; here, the relevant "fact" is the regime under which Jones filed.

[2] The first sentence of each section should focus on the client's specific case rather than wallow in platitudes or abstractions about the law.

Original	Revision
harassment under Title VII. In an equal protection case, the court said, "[t]he ultimate inquiry is whether sexual harassment constitutes intentional discrimination." 799 F.2d at 1187. "This differs from the inquiry under Title VII as to whether or not the sexual harassment *altered the conditions of the victim's employment*. That standard comes from the regulations promulgated under Title VII." *Id.* (emphasis supplied). Thus, a finding that the harassment altered the conditions of the victim's employment is *not* an essential element of an action under Section 1983 for violation of the right to equal protection. *See also Andrews v. City of Phila.*, 895 F.2d 1469, 1482, 1483 & n.4 (3d Cir. 1990) ("Section 1983 and Title VII claims are complex actions with different elements").	sexual harassment constitutes intentional discrimination." But under Title VII, the inquiry is "whether or not sexual harassment altered the conditions of the victim's employment."[3] *Bohen v. City of East Chicago*, 799 F.2d 1180, 1187 (7th Cir. 1986); *see also Andrews v. City of Phila.*, 895 F.2d 1469, 1482, 1483 & n.4 (3d Cir. 1990) ("Section 1983 and Title VII claims are complex actions with different elements.").
Correct application of these principles is illustrated in *Ascolese v. Southeastern Pennsylvania Transportation Authority*, 925 F. Supp. 351 (E.D. Pa. 1996). *Ascolese* involved a claim by a female police officer who alleged three different forms of gender-based discrimination, one of which was sexual harassment. The harassment allegedly occurred during a medical examination by a male physician employed by the same agency. 925 F. Supp. at 354, 358-	Because of this distinction,[4] when public officials such as the President have cited the Title VII standard when seeking summary judgment in Section 1983 sexual-harassment cases, courts have denied the motion.[5] *See, e.g., Ascolese v. Se. Pa. Transp. Auth.*, 925 F. Supp. 351 (E.D. Pa. 1996) (denying summary judgment for state physician in Section 1983 case who claimed that conduct did not constitute "hostile work

[3] The legal analysis should begin with what courts do rather than with what happened in a given case. The reader is much less interested in individual cases than in trends in the law.

[4] Try to bridge concepts and ideas from one paragraph to the next by using connecting words or by repeating key concepts: here, "distinguish" . . . "distinction."

[5] Judges are concerned about being reversed. Show explicitly what other courts have done in similar circumstances.

Original	Revision
59. The physician, who was named as a defendant, moved for summary judgment on the ground that the single medical examination could not have constituted a "hostile work environment" as defined by Title VII jurisprudence. The court rejected the defendant's argument specifically holding that the standard for actionable sexual harassment under Section 1983 is different from the standard for sexual harassment under Title VII: > The present claim is brought under section 1983, and is therefore subject to a different analysis from the Title VII claim at issue in *Bedford* [*v. Southeastern Pennsylvania Transportation Authority*], 867 F. Supp. 288 (E.D. Pa. 1994). The focus of the analysis under section 1983 is on "whether the sexual harassment constitutes intentional discrimination," not on whether the "sexual harassment altered the conditions of the victim's employment," the standard under Title VII. In order to demonstrate that she has been subjected to sex discrimination under section 1983, Ascolese must show that she was treated differently than a similarly situated person of the opposite sex would have been. Moreover, the sex discrimination at issue in this case is discrimination by a public official in the course of performing his duties (in this case, a medical examination), rather than discrimination at Ascolese's	environment" under Title VII and finding "no need to consider the alleged discrimination in the context of [plaintiff's] entire work experience, as there would be under Title VII . . . ; the relevant context is only that of the examination itself.").[6] *Id.* at 359–60 (citations omitted).

[6] This parenthetical is long but does the trick. Eliminate articles and short prepositions in parentheticals and begin with an "-ing" word such as "holding" or "finding." Or simply quote a single key sentence from the case in your parenthetical. Note what's been deleted from the original: the huge block quote and case summary.

Original	Revision
workplace generally. Thus, there is no need to consider the alleged discrimination in the context of Ascolese's entire work experience, as there would be under Title VII . . . ; the relevant context is only that of the examination itself. 925 F. Supp. at 359-60 (citations omitted). Thus, the plaintiff in *Ascolese* was not required to prove that the acts of harassment had "altered the conditions of [her] employment," 925 F. Supp. at 359, but only that her one encounter with the defendant physician was "hostile" or "abusive." *Id.* at 360.	
The same principles apply here. Paula Jones is not required to prove that Governor Clinton altered the conditions of her employment (although she can and will do so), but only that, in the context of Plaintiff's public employment, Mr. Clinton, acting under color of state law, intentionally discriminated against Plaintiff because of her gender. Viewing the evidence in the light most favorable to Mrs. Jones (as is the Court's duty at this juncture), a jury might reasonably find—and indeed would likely find—that Governor Clinton's conduct was intentional, that it was based on Plaintiff's gender, and that it was both "hostile" and "abusive."	Here,[7] then, the "relevant context"[8] is what the President did to Jones, not, as the President suggests, Jones's "entire work experience." *Id.* To prevail, Jones need not prove that the President's acts of harassment have "altered the conditions of [her] employment," but only that her encounter with the President was "hostile" or "abusive." *Id.* Put another way, to defeat summary judgment, Jones need only proffer evidence that the President intentionally discriminated against her because of her gender.[9]

[7] Favor simple words such as "here" rather than "in the instant case" or "in the present case."

[8] Another bridge: "relevant context."

[9] This paragraph merges the legal standard into the facts of Jones's case.

Original	Revision
As supposed authority for the proposition that Plaintiff absolutely cannot recover under Section 1983 unless she proves every element of "sexual harassment" within the meaning of Title VII, Mr. Clinton's counsel cites two Seventh Circuit cases (and no Eighth Circuit cases), *Trautvetter v. Quick* and *King v. Board of Regents of the University of Wisconsin System*. See MEMORANDUM at 4. In fact, these cases make no such definitive pronouncement; to the contrary, they refute Mr. Clinton's suggestion that the essential elements of sexual harassment in a suit under Section 1983 are well defined to be identical to those in a suit under Title VII. In *King*, the court wrote: "We have held that sexual harassment is a violation of equal protection, *Bohen*, 799 F.2d at 1185, although the precise parameters of this cause of action have not been well defined." And in *Trautvetter* the court wrote: "The parameters of a cause of action alleging sexual harassment as a violation of the equal protection clause have not been precisely defined. We have noted, however, that such a claim generally follows the contours of a Title VII allegation of sexual harassment." 916 F.2d at 1149 (citing *King*). Saying that sexual harassment under Section 1983 "generally follows the contours of" sexual harassment under Title VII is a far cry from saying that the required elements of proof are identical. Thus both cases explicitly note	Even if some cases suggest that Title VII sexual-harassment claims and Section 1983 sexual-harassment actions "generally follow the same contours," that hardly means that the two actions share the same elements.[10] *Cf.* Memorandum at 4, *citing Trautvetter v. Quick*, 916 F.2d 1140 (7th Cir. 1990); *King v. Bd. of Regents of Univ. of Wis. Sys.*, 893 F.2d 533 (7th Cir. 1990). Both *Trautvetter* and *King* distinguish, in fact, between the two types of claims. *See King*, 893 F.2d at 536 (noting that unlike with Title VII sexual-harassment actions, "the precise parameters of [Section 1983 sexual-harassment actions] have not been well defined"); *accord Trautvetter*, 916 F.2d at 1149. Both cases even cite *Bohen* with approval in this regard, confirming that courts distinguish Title VII actions from Section 1983 actions.

[10] In confronting counterargument, try to stay on message. Here, the message is that Section 1983 and Title VII are different actions with different elements. Your goal is to finesse the adverse quotation while building on the distinction between the two regimes.

Original	Revision
that the requirements for a sexual-harassment action under Section 1983 are *not* well defined. More importantly, both cases cite with approval *Bohen v. City of East Chicago*, wherein the same circuit court of appeals held that the elements of a sexual-harassment suit under Section 1983 are not the same as those in a suit under Title VII. 799 F.2d at 1187.	
Based as it is on a misreading of the two Seventh Circuit cases, the second premise of Mr. Clinton's argument is false. Significantly, Mr. Clinton has directed the Court to no Eighth Circuit or Supreme Court cases holding that every element of a quid pro quo harassment claim under Title VII must be proven to maintain an action under Section 1983 for gender-based discrimination in the form of quid pro quo sexual harassment. More specifically, there is no Eighth Circuit or Supreme Court authority for the proposition that "tangible job detriment" is an essential element of a Section 1983 action based on quid pro quo sexual harassment.	For all these reasons, the President cannot seek summary judgment here by forcing Jones's Section 1983 claim into Title VII. What the President did to Jones is enough to sustain her claim.[11]

[11] Try not to be too academic or long-winded in your conclusions. A fresh iteration of a key point is more effective.

Transactional Model

Original	Revision
1.6 Conflicts of Interest. It is agreed that any direct or indirect interest in, connection with, or benefit from any outside activities, particularly commercial activities, which interest might in any way adversely affect Company or any of its affiliates, involves a possible conflict of interest. In keeping with Employee's fiduciary duties to Company, Employee agrees that Employee shall not knowingly become involved in a conflict of interest with Company or any of its affiliates, or upon discovery thereof, allow such a conflict to continue. Moreover, Employee agrees that Employee shall disclose to Company's General Counsel any facts which might involve such a conflict of interest that has not been approved by the Company's Board of Directors (the "Board of Directors"). Company and Employee recognize that it is impossible to provide an exhaustive list of actions or interests which constitute a "conflict of interest." Moreover, Company and Employee recognize there are many borderline situations. In some instances, full disclosure of facts by Employee to Company's General Counsel may be all that is necessary to enable Company or its affiliates to protect its interests. In others, if no improper motivation appears to exist and the interests of Company or its affiliates have not suffered, prompt elimination of the outside interest will suffice. In still others, it may be necessary for Company to terminate the employment relationship. Employee agrees that Company's determination as to	**1.6 Conflicts of Interest**. **1.6.1. Definition**. A conflict of interest is any connection with any outside activities that may adversely affect Company. **1.6.2. Company's right to identify conflicts**. Company reserves the sole right to determine whether a conflict exists. **1.6.3. Employee's duty to avoid conflicts**. Under Employee's fiduciary duties to Company, Employee shall not knowingly engage in a conflict of interest with Company. **1.6.4. Employee's duty to report and remove conflicts**. If Employee discovers a conflict, he shall remove the conflict. As part of that duty, Employee shall disclose to Company's General Counsel any facts that might involve a conflict of interest that the Company's Board of Directors has not yet approved. **1.6.5. Employee's right to remove conflict without reporting conflict to Company**. If Company has suffered no harm, Employee may eliminate the outside interest without reporting the conflict to Company. **1.6.6. Company's right to eliminate conflicts and to invoke remedies**. Company reserves the right to take such actions that, in its judgment, will end the conflict, including, but not limited to, terminating the employment relationship.

Original	Revision
whether a conflict of interest exists shall be conclusive. Company reserves the right to take such action as, in its judgment, will end the conflict.	

Edits

Thirty Key Edits with Examples and Explanations

BriefCatch will make these changes and hundreds more automatically.

Comment	Original	Revision
1. ***There is; there are.*** A weak, wordy way to open sentences and clauses.	1. There is no doubt that the appellant's posts were aimed at the appellee.	1. Appellant's posts were no doubt aimed at the appellee.
2. ***With respect to.*** Long, heavy, and vague. Replace with something precise.	2. With respect to the claims for fraud and negligent misrepresentation, it is clear that Mr. Campbell—the only defendant against whom these claims remain pending—has not carried his initial burden of demonstrating the absence of any genuine issue of material fact.	2. Genuine issues of material fact remain in the fraud and negligent representation claims, and Mr. Campbell has not proved otherwise.
3. ***The fact that.*** An "especially debilitating expression," according to *The Elements of Style*. It invites weak passive constructions and other bloated phrases.	3. The fact that the authors "provide no statistical analysis to discern the probability of chance occurrence versus causal occurrence" severely limits the study's relevance to our *Althen* inquiry.	3. The study has limited relevance to our *Althen* inquiry because the authors "provide no statistical analysis to discern the probability of chance occurrence versus causal occurrence."

Comment	Original	Revision
4. ***Clearly.*** As Chief Justice Roberts has put it, "We get hundreds and hundreds of briefs, and they're all the same. Somebody says, 'My client *clearly* deserves to win, the cases *clearly* do this, the language *clearly* reads this,' blah, blah blah. And you pick up the other side and, lo and behold, they think they *clearly* deserve to win."[12]	4. The court's careful choice of words [. . .] clearly implies that there can be quid pro quo harassment that does not result in a tangible detriment.	4. The court's language . . . suggests that quid pro quo harassment does not always generate a "tangible detriment."
5. ***Said, such, same***. Archaic and awkward–a parody of legalese. Use *the*, *this*, or *that*.	5. The First Amendment protects such materials against compelled disclosure.	5. The First Amendment protects the materials against compelled disclosure.
6. ***In order to***. Replace with *to* or recast.	6. In order to be actionable under Section 1983, gender-based discrimination is not required to be "sexual harassment" as that term has been defined in Title VII jurisprudence.	6. Under Section 1983, gender-based discrimination need not be "sexual harassment" under Title VII.

[12] Remarks at Northwestern University School of Law, February 2007.

Comment	Original	Revision
7. ***Whether or not***. Use only *whether*. Exception: when you're saying that only one outcome will occur no matter what. "Whether or not you agree with me, I'm going ahead with my original plan."	7. In a Section 1983 case, whether or not the conditions of employment were altered is not even a "relevant inquiry."	7. In a Section 1983 case, whether the conditions of employment were altered is not even a "relevant inquiry."
8. ***Prior to***. Use *before*. And replace *subsequent to* with *after*.	8. Ms. Doe described these meetings as "social," and they occurred prior to her judicial appointment.	8. The meetings, which Doe described as "social," took place before she became a judge.
9. ***Pursuant to.*** Use only to refer to binding law and consider replacing it with *under*. Avoid *pursuant to our discussion*, *pursuant to your call*, and similar variants. *As we discussed* is more natural and idiomatic.	9. Defendant advised her to deny their relationship and suggested ways for her to avoid testifying and producing evidence pursuant to the subpoena.	9. Defendant asked her to deny their relationship and then suggested how she could avoid testifying or producing evidence under the subpoena.
10. ***Despite the fact that.*** This construction is heavy. Replace with *even though* or *although.* Avoid *notwithstanding the fact that* for the same reason.	10. In both *Jansen* and *Ellerth*, the Seventh Circuit held for the employees [. . .] despite the fact that neither of the employee-plaintiffs had proven a "tangible job detriment" in the sense urged by Defendant.	10. In both *Jansen* and *Ellerth*, the Seventh Circuit held for the employees . . . even though neither employee had proved a "tangible job detriment" as Defendant defines the phrase.

Comment	Original	Revision
11. ***Adverbs.*** A sign of weak prose, adverbs often pick fights you don't need and can't win. Instead, use verbs and nouns that help the reader draw the conclusion you want.	11. Ms. Willey's attorney suddenly formally notified the court and Plaintiff that Ms. Willey allegedly required neck surgery that, just coincidentally, was precipitously scheduled for August 4, 2019.	11. Willey's attorney notified Jones and this Court that Willey had scheduled neck surgery for the day she was expected to testify.
12. ***"Ion" noun phrases***. Recast nominalizations—the noun form of verbs—as verbs. Active noun–verb sentences will bring your prose to life.	12. Here, the application of the First Amendment privilege "turns not on the type of information sought, but on whether disclosure of the information will have a deterrent effect on the exercise of protected [First Amendment] activities."	12. Here, applying the First Amendment privilege "turns not on the type of information sought, but on whether disclosure of the information will have a deterrent effect on the exercise of protected [First Amendment] activities."
13. ***"Of" phrases.*** Excessive prepositional phrases—particularly *of* phrases—make your writing stiff. Most grammar checkers will flag sentences with three or more prepositions, but you might want to draw the line at two.	13. The Eighth Circuit's enumeration of the elements of a quid pro quo action under Title VII was made in the context of a case in which it was necessary to establish liability of the employer for an employee's (the foreman's) acts of harassment.	13. When the Eighth Circuit listed the elements of a quid pro quo action under Title VII, the court was considering whether an employer could be liable for its employee's harassing acts.

Comment	Original	Revision
14. ***Double negatives.*** Triple and quadruple negatives are also common. The solution: a positive construction.	14. Plaintiffs are not otherwise obligated to pay a proportionate share of capital improvements to any other [Association], common facility, or area that Plaintiffs are not entitled to use or enjoy through their deeded easements or through this Agreement.	14. Plaintiffs must pay a proportionate share of capital improvement to any other [Association], common facility, or area they have a right to use.
15. ***Several words for one.*** Replace long phrases with short, punchy words.	15. For the purpose of providing legal advice, counsel instructed the agency to prepare three reports.	15. To provide legal advice, counsel instructed the agency to prepare three reports.
16. ***Heavy connectors.*** Replace deadweight openers—*however*, *additionally*, *consequently*, *accordingly*—with lighter ones like *thus*, *so*, *but*, *also*.	16. However, in *Anders* cases, appellate courts "have the authority to reform judgments and affirm as modified in cases where there is non-reversible error."	16. But in *Anders* cases, appellate courts "have the authority to reform judgments and affirm as modified in cases where there is non-reversible error."
17. ***Thumb-sucking.*** Avoid attributing facts or analyses to yourself or your client. Why take an objective fact and turn it into something that sounds like spin?	17. Kimberly-Clark respectfully submits that this line of reasoning runs afoul of longstanding Supreme Court precedent, holding that "standing is not dispensed in gross."	17. Plaintiff's argument misrepresents Supreme Court precedent, which holds that "standing is not dispensed in gross."

Comment	Original	Revision
18. ***Throat-clearing.*** Avoid the dreaded *it is* constructions: *it is important to note that*, *it is essential to understand that*, and *it is important to emphasize that*, among others.	18. It is important to note that neither of these factors is present in this case.	18. Neither of these factors is present.
19. ***Jargon and legalese***. They don't make you look smart. Nor do they impress clients. If only it were that easy!	19. [T]he Supreme Court upheld a conspiracy claim on facts very similar to those at issue herein.	19. The Supreme Court has upheld a similar conspiracy claim.
20. ***Provisos***. Heavy and confusing. Try *if*, *except*, *unless*, or *and* instead.	20. Arbitration shall be the exclusive and final remedy for any dispute between the parties in connection with or arising out of the Provider Agreement; provided, however, that nothing in this provision shall prevent either party from seeking injunctive relief for breach of this Provider Agreement in any state or federal court of law.	20. Arbitration will be the exclusive and final remedy for any dispute between the parties arising out of the Provider Agreement; except that nothing in this provision will prevent either party from seeking injunctive relief for breach of this Provider Agreement in any state or federal court.
21. ***Latin.*** Avoid Latin unless you're using a term of art. And watch out for the often confused *e.g.*, *i.e.*, *supra*, and *infra*. If you must use them, make sure you're using them correctly.	21. This Court ultimately recognized that the Legislature explicitly provided for some records to be prohibited from disclosure (i.e., the personnel records of law enforcement) but that others were not (i.e., all public employees or public officials) when promulgating FOIA.	21. This Court has recognized that the Legislature exempted some records from disclosure (such as law enforcement personnel records) but not others (such as all other public employees or officials).

Comment	Original	Revision
22. ***Redundancy.*** Many sentences waste words that point out the obvious or the implied.	22. Additionally, and most significantly, new evidence has come to light since the conclusion of Ms. Willey's deposition.	22. New evidence has also emerged since Willey's deposition.
23. ***Stopping the action.*** Avoid commenting on why decision-makers do what they do. Just give the facts: "The court has often reversed."	23. [T]he Eighth Circuit has frequently found it necessary to reverse a summary judgment granted by a district court in favor of a defendant in an employment-discrimination case.	23. The Eighth Circuit has often reversed district courts that grant summary judgment in employment-discrimination cases.
24. ***Blather.*** "Write with your ear," suggests Judge Robert J. Kapelke. "Read your draft aloud to yourself or at least read it through in your mind. If neither you nor anyone you know would ever utter a sentence like the one you have written, head back to the drawing board."[13]	24. Although the record contains no evidence of an explicit agreement, the coordinated actions of defendant and the driver of the getaway vehicle warrant a fair inference that defendant and the driver conspired together to accomplish the shooting, which they intended to result in the death of the victim.	24. The defendant and the getaway driver's coordinated actions suggest that they conspired in the shooting and the victim's death.

[13] Robert J. Kapelke, *Some Random Thoughts on Brief Writing*, 32 Colo. Law. 29, 29 (2003).

Comment	Original	Revision
25. ***Pomposity.*** Many sentences read as if the writer is trying to sound smart—rather than trying to make the reader feel smart. A reader who doesn't understand a sentence may assume that the writer didn't either.	25. [T]raditional principles of agency are inadequate determinants of the employer's liability.	25. Traditional agency principles cannot resolve whether the employer is liable here.
26. ***Overpromising.*** The more you claim, the more you must prove.	26. The greatest evil inherent in quid pro quo harassment is that it puts the victim on the horns of a terrible dilemma.	26. A victim of quid pro quo harassment has no easy solution.
27. ***Mixed metaphors.*** Mixed metaphors are painful, and unmixed metaphors often sound trite. Walk softly here, and use only metaphors that stick.	27. Disputed questions of fact are not appropriate grist for the summary judgment mill.	27. [Cut completely].
28. ***Mock outrage.*** Everyone knows that you and your adversaries disagree. These sputtering constructions play better on talk radio than in a legal document.	28. Such a disparity of power, coupled with its atrocious abuse, goes to the heart of the interest that the tort of outrage is intended to protect.	28. The tort of outrage contemplates abuses of power such as this.
29. ***Unnecessary definition.*** No need to define the obvious.	29. This resulted in an order entered on July 11, 2016 (hereinafter the "JULY 11 ORDER").	29. This led to the court's July 11, 2016 order.

Comment	Original	Revision
30. ***Yawning boilerplate***. If it's something you learned in law school (say, collateral estoppel or the negligence elements), be brief. If it's a platitude like "our system of law requires respecting binding precedent," be merciful to your reader and cut it altogether.	30. In passing on the motion as it pertains to [these] issues, the Court should note not only the summary judgment standards briefed above, but also the nature of the facts to be proved.	30. [Cut completely].

100 Edits for Every Lawyer

BriefCatch will make these changes and hundreds more automatically.

Avoid	Use
A sufficient number of	Enough
Accomplish	Do
Additionally	And, also
All of the invoices were included	All the invoices were included
Almost every one of them	Almost all
Along the lines of	Like
Anticipate	Expect
Apprise	Inform
As regards	On, for, as for, about
As to	On, about
Ascertain	Learn, find out, determine
At the present time	Now
At the same time as	As, while
At the time when	When
At this point in time	Time, point, now
Because of the fact that	Because
Both of these findings	Both findings
By means of	By, through, with
Cease	Stop
Cognizant of	Knows about, aware of
Component	Part
Consequently	So, thus
Contingent on	Depends on
Defendant has preserved all of its rights	Defendant has preserved all its rights
Despite the fact that	Although, even though, though, while
Did not accept	Rejected
Did not allow	Prevented
Did not consider	Ignored
Does not have	Lacks
Due to the fact that	Because
During such time as	As long as, while, during, as
During the course of	During, in, throughout, while

Avoid	Use
Elucidate	Explain
Eventuate	Occur, happen
Facilitate	Help
For the purpose of	To, for
For the reason that	Because
Furthermore	And
Has a tendency to	Tends to
However (as the first word of a sentence)	But
Impact (as a verb)	Affect
Implement	Carry out
In addition to	Besides, along with, on top of
In order to	To
In spite of the fact that	Although, even though, though, while
In the case of *Roe*,	In *Roe*, for *Roe*, with *Roe*, as for *Roe*,
In the event that	If
In the instant case	Here, in this case
In the near future	Soon
In view of the fact that	Because, given
Initiate	Begin, start
Is able to	Can
Is not required to	Need not
Is of the opinion that	Believes that, finds that
Is required to	Needs to, must, has to, is needed to
It appears that the court	The court
It goes without saying that the Sixth Circuit	The Sixth Circuit
It is critical that	Should, must
It is essential that	Should, must
It is imperative that	Should, must
It is important that	Should, must
It is incumbent upon	Should, must
It is necessary that	Should, must
It is plaintiff who denied	Plaintiff denied
It is possible that	Might, perhaps
It should be noted that defendant admitted	Defendant admitted
Lengthy	Long

Avoid	Use
Make changes in	Change, alter, adjust, tweak, recast
Make decisions on	Decide, decide on
Many of the cases cited in plaintiff's brief	Many cases cited in plaintiff's brief
Moreover	And, also
Not able	Unable
Not important	Unimportant, trivial
Not many	Few
Not possible	Impossible
Not the same as	Different from
Notwithstanding the fact that	Although, even though, though, while
On a weekly basis	Weekly
On the grounds that	Because
Owing to the fact that	Because
Period of time	Period, time, time period
Prior to	Before
Prong	Part
Provide a summary of	Summarize, outline
Pursuant to the regulation	Under the regulation
Rationale	Reason
Render	Make
Serve to make reductions in	Make reductions in
Several of the findings are incorrect	Several findings are incorrect
Subsequent to	After, since
Terminate	End
The amount of increase was significant	The increase was significant
The estimates presented in Appendix A	The estimates in Appendix A
The facts that were considered in *Roe*	The facts considered in *Roe*
The field of legal ethics	Legal ethics
The findings that are set forth in the court's order	The findings in the court's order
The majority of	Most, many, most of, many of
The parties who are located in this jurisdiction	The parties in this jurisdiction

Avoid	Use
The purpose of the impossibility doctrine is to allow	The impossibility doctrine allows
There are some members of the class who claim that	Some class members claim
There is nothing about section 201.101 that suggests	Nothing in section 201.101 suggests
Therefore	Thus
To the extent that	If, even if, only if, when
Transpire	Occur, happen, take place
Under circumstances in which	When, if
Until such time as	Until
Utilize	Use
Whether or not	Whether
With a view toward	To
With regard to	About, on, as for
With respect to	About, on, as for

Checklists

135 Transition Words and Phrases

To provide another point

Additionally
And
Along with
Also
Another reason
As well (as)
Besides
Further*
Furthermore*
In addition
Moreover
Nor
To X, Y adds Z
What is more

To conclude

Accordingly*
All in all
Consequently
Hence*
In brief
In conclusion
In short
In sum
In summary
In the end
Then
Therefore
Thus
To summarize

To extract the essence

At bottom
At its core
At its root
In effect
In essence
In the end
The bottom line is that

To show cause and effect

And so
And therefore
And thus
As a result
Because
For
For that reason
In consequence*
On that basis
So
That is why
To that end
To this end
With that in mind

To draw an analogy or comparison

As in X, Y
As with X, Y
By analogy
By extension
Here
In each case
In like manner
In the same way
Just as X, so Y
Like X, Y
Likewise
Similarly
So too here
So too with

* Use cautiously, as these can make prose heavy or plodding.

To draw a contrast

At the same time
But
By contrast
Despite
For all that
Instead
However
In contrast
In the meantime
Nevertheless
Not
Rather
Unlike (in)
Yet

To give an example

As an example
As in
By way of example*
First, second, third, etc.
For example
For instance
For one thing
Imagine (as the first word of a sentence)
Including
In that regard
Like
Say
Such as
Suppose (as the first word of a sentence)
Take (as the first word of a sentence)
To illustrate*

To concede a point or to preempt a counterargument

All of that may be true, but
All the same
Although
At least
At the same time
Even assuming
Even if
Even so
Even still
Even though
Even under
For all that
Of course
On the other hand
Otherwise
Still
That said
Though some might argue
To be sure
True enough

To redirect

At any rate
(Even) more to the point
In all events
In any event

To emphasize or expand

Above all
All the more because
All the more reason
All the more X because of Y
By extension
Especially
Even more (so)
If anything
In effect
In fact
In other words
In particular
Indeed
Not only X, but (also) Y
Particularly
Put another way
Put differently
Simply put

* Use cautiously, as these can make prose heavy or plodding.

Eight Questions for Every Writing Project

1. What is the jurisdiction? What's the procedural status?
2. Would you like me to consult other attorneys, review any specific work product, or refer to an internal document bank?
3. When should I first check in with you? After researching? After finding adverse authority or facts? After 20 hours? After the first draft?
4. How long do you expect the final product to be, and what should the format be?
5. How many hours do you expect the project to take?
6. Do you prefer the authorities to be printed out or in electronic form? Do you want unpublished opinions? Secondary sources?
7. What's the deadline? Is it fixed or flexible?
8. What will likely happen with the finished product? Would it help if I knew who might eventually read it and in what format?

Writing Memos

1. **Stay focused.** A good memo is a springboard to a decision about client advice or internal strategy, not a navel-gazing thought piece. Every word of the memo should help the supervisor make a decision and feel confident in doing so.
2. **Apply the first-page rule.** If the supervisor read just the first page of your memo, would she get the gist of the problem and grasp your solution? Many memos fail that test.
3. **Don't show your work.** No one wants to read a law review article. Erudition for its own sake won't win praise. Supervisors want to learn how the key points of the law affect their clients' fate.
4. **Cut the self-reference:** "This memo will first discuss X, but because the memo is not supposed to rely too much on X, the memo will then discuss Y at great length." Just explain which issues matter—and then tackle each one succinctly.
5. **Jump off the fence.** Many associates conclude that the answer to the question posed is "unclear." But anything you're asked to predict is unclear by definition. Take a stand and back it up based on your best understanding of what a court or party or adversary would likely do. If you spot a counterargument—and you always should—address it head-on and explain why it should not prevail. If the cases are so confusing that you're overwhelmed, at least try to explain what's behind the confusion.

6. **Distill the law.** The biggest flaw in most memos is excessive reliance on case summaries. Readers don't want to wade through dozens of paragraph-long case summaries in which each case is analogized or distinguished methodically in a vacuum. Instead, use your judgment to distill the takeaways from all the cases you've digested. If you can't draw a line in the case law, you probably haven't analyzed the authorities enough.

7. **Distill the issue.** Make sure that your "question presented" and "brief answer" include enough key facts to stand alone. These sections should tell the reader what happened, what the legal issue is, and how the issue will be resolved. Avoid assuming legal conclusions: "He was negligent because he failed to meet the standard of care."

Editing

1. Cut unnecessary prepositions and adverbs.
2. See if you can replace three- and four-word phrases with one word.
3. Strike truisms, clichés, and trite attacks on the other side.
4. Include at least one sentence that is fewer than ten words on each page.
5. Center sentences on parties, witnesses, or courts.
6. Refocus "In *Jones v. Smith*, Jones . . ." paragraphs around what the holdings mean for the current parties.
7. Organize your structure around the judge's likely questions, not around your authorities.
8. Make sure that the first sentences of your paragraphs, if true, would prove the heading true.
9. Make sure that the first thing you say about each authority is about why it helps your client win.
10. Include enough transition words and phrases to make your facts, cases, and arguments fit together like a puzzle.

Editing Transactional Documents

1. Have I spelled the parties' names correctly and used their proper corporate form?
2. Have I triple-checked all dates, numbers, and figures?
3. Have I included key boilerplate provisions (severability, merger, notice, dispute resolution, choice of law, indemnity, counterparts, assignment)?
4. Have I used all defined terms at least twice, defined terms consistently, and avoided embedding covenants in my definitions?
5. Have I verified that all cross-referenced paragraph numbers are still accurate, particularly those following "notwithstanding" or "subject to"?
6. Have I labeled exhibits and schedules consistently?
7. Have I labeled cross-referenced paragraphs consistently?
8. Have I formatted numbers and currencies consistently?
9. Have I formatted margins, line spacing, and paragraph spacing consistently?
10. Have I read the agreement from the other parties' perspective to spot any possibly unfavorable language?

Commonly Litigated Phrases

Shall

A two-step drafting technique could help avoid most *shall* problems:

1. Ask yourself whether you could replace *shall* with "is obliged to." If so, use *shall*.
2. If not, ask yourself if another word or phrase would be more precise.

May, May Not

- Use *may* for "reserves the right to."
- For negative obligations, use *shall not* rather than *may not*.
- Avoid *may only* and *only may*.
- Place *only* before the limitation or contrast (often, that is where you would put the phrase "but only"): "You have a right to appeal only two times."

And, Or, And/Or

Courts may construe *and* and *or* in the conjunctive, in the disjunctive, or both. To avoid confusion, consider the following:

- both A and B
- A or B, but not both
- A, B, or both

Provisos

Use *provided, however, that* and *provided, further, that* only for exceptions to general rights and obligations. For *provided that*, consider one of the following:

- if (for conditions)
- except (for exceptions)
- unless (for exceptions)
- and (for additional rights or obligations)

Definitions

Don't embed any covenants in your definitions.

Better, Saner, and Safer Email

1. Warm your tone to avoid misunderstandings and resentments. Add the person's name, a "hello," a personal message, and a "thanks."
2. Build in time for reflection: draft emails before addressing them.
3. Transform drab, stale subject lines into up-to-the-minute "headlines."
4. Use the "Three-Sentence Solution":
    - Why are you writing to me?
    - What's the gist of your message?
    - What do you want me to do?
5. Use breaks, numbers, and bullets to make your emails easier to read. After about five lines of text, skip a line and start a new paragraph.
6. Avoid ALL CAPS. Also, avoid all lowercase.
7. Don't get too personal: shun smileys, colors, fonts, and quirky signatures.
8. Watch out for the three great grammar gaffes:
    - Its, it's
    - Their, there, they're
    - Your, you're
9. Before you click "reply all," stop and think. Then stop and think again.
10. Just say no to chain letters, urban legends, jokes, politics, and religion. The risks always exceed the benefits.
11. When replying, rephrase the inquiry in your answer.
12. Set aside time slots during the day to work through non-urgent emails.
13. Keep your inbox clear except for pending tasks.
14. Send different emails for different tasks. Otherwise, the recipient will likely do the first task (or answer the first question) and then forget the rest.
15. If you have to write, "Do not forward," you shouldn't send the message. Likewise, remember that emails are discoverable and can never be destroyed.
16. Remember the lessons of many recent corporate scandals: even a short email can bring down a company.
17. If you regret sending an email, follow up to clarify, but never tell the recipient to delete it.

18. When discussing internal employee matters, avoid humor, sarcasm, and self-criticism.

19. Consider never sending a Word document outside the firm unless it's to co-counsel or a client who is working on the document with you; only send PDFs. Even within the firm, check Word documents for metadata and tracked changes before you send it, in case there are things you don't want the recipient to see.

20. Avoid sending non-password-protected or unredacted attachments that include personal data.

Eighteen Resources for Every Lawyer

Ruggero J. Aldisert, Winning on Appeal: Better Briefs and Oral Argument

A must-have handbook for any serious advocate.

Matthew Butterick, Typography for Lawyers

A critical resource on the essentials of typography aimed specifically at attorneys.

Mark Davidson, Right, Wrong, and Risky: A Dictionary of Today's American English Usage

An engaging guide to common usage disputes.

Benjamin Dreyer, Dreyer's English: An Utterly Correct Guide to Clarity and Style

A modern and entertaining grammar guide from Random House's copy chief.

Robert Hartwell Fiske, The Dictionary of Concise Writing: More Than 10,000 Alternatives to Wordy Phrases

Thousands of editing suggestions.

Mignon Fogarty, Grammar Girl's Quick and Dirty Tips for Better Writing

A practical and clever source of memory tricks for those troublesome grammar rules.

Charles Fox, Working with Contracts: What Law School Doesn't Teach You

An excellent, practical guide for corporate attorneys at all levels. This book is something to read cover to cover.

Bryan Garner, A Dictionary of Modern Legal Usage

The most useful authority for legal-writing wording questions.

Tom Goldstein and Jethro Lieberman, The Lawyer's Guide to Writing Well

A helpful general guide co-written by a lawyer and a journalism professor. Excellent examples and editing exercises.

Ross Guberman and Gary Karl, Deal Struck: The World's Best Drafting Tips

A guide to the best contract-drafting tips for commercial agreements.

Ross Guberman, Point Made: How to Write Like the Nation's Top Advocates

Fifty concrete tips from fifty of the most prominent advocates.

Ross Guberman, online E-Learning Workout for Lawyers

A slate of self-paced online workout paths delivered through a state-of-the-art Learning Management System.

Bruce Ross-Larson, Edit Yourself: A Manual for Everyone Who Works with Words

Accessible lists of easy edits that yield immediate benefits.

Mary Norris, Between You & Me: Confessions of a Comma Queen

A fun and enjoyable memoir of her years in *The New Yorker* copy-editing department toiling away with pencils and punctuation.

Mary Norris, Greek to Me: Adventures of the Comma Queen

An excellent book about the author's passion for all things Greek, including the alphabet, words, and how Greek helped form English.

James B. Stewart, Follow the Story: How to Write Successful Nonfiction

A terrific guide to writing about facts.

Joseph Williams, Style: Lessons in Clarity and Grace

Presents ten lessons on clarity, concision, cohesion, and coherence. The chapter on elegance is essential reading for any sophisticated writer, legal or otherwise.

William Zinsser, On Writing Well

A writing classic.

Templates

Writing to Supervisors

Use these questions to organize the discussion section of an internal memo.

¶	Question	Answer
1	What are the main reasons the law would go one way?	
2	What are the main reasons it would go the other way?	
3	Which outcome is more likely and why?	
4	What should we do next?	
5	What should we tell the client to do in the meantime?	

Writing to Clients About a Legal Development

Use these questions to organize the paragraphs in a client communication.

¶	Question	Answer
1	How would the change affect me? (How will it help me make more money, avoid litigation, or avoid governmental scrutiny or negative publicity?)	
2	How is the law different now from how it was before?	
3	Can you tell me only what I need to know about the change so I can see how it could affect me?	
4	What should I look for next? (Who will support or oppose the change and why?)	
5	What should I do next and why do I need you to help me? (the "Call to Action")	

Writing to Clients About a Legal Issue

Use these questions to organize the paragraphs in your client communication.

¶	Question	Answer
1	Why am I being threatened?	
2	What is the firm doing to help me?	
3	How does the law apply in these situations?	
4	How might I fight this?	
5	How might I lose?	
6	What should I be doing right now?	

Writing to Opposing Counsel

Use these questions to organize the paragraphs in a communication to an adversary.

¶	Question	Answer
1	What do you want?	
2	Why do you deserve it?	
3	Why would I want to help you?	
4	What about my own agenda?	
5	What will happen if I don't agree?	
6	What should happen next?	

Preliminary Statements

Use these questions to organize your preliminary statement or introduction.

¶	Prompt	Answer
1	How did the conflict arise?	
2	Why should you win the conflict?	
3	Why should I care about your conflict?	
4	What are the two competing views of the law or the facts?	

Advocacy Writing

Use these questions to organize a section of an advocacy piece.

¶	Question	Answer
1	What standard should I apply?	
2	How does the standard work?	
3	Will I be reversed if I adopt your version of the law?	
4	How does the law apply here?	
5	What about the other side's points?	
6	So what's the bottom line?	

Transactional Drafting

Use these questions to organize a complicated contract provision.

¶	Question	Answer
1	Who needs to do what?	
2	Who reserves the right to do what?	
3	How would a breach occur?	
4	What are each party's rights after a breach?	
5	What are each party's duties after a breach?	
6	What are each party's remedies after a breach?	

Rules

Troublesome Words and Phrases

Affect vs. *effect*

- *Affect* for change: "The new regulation may affect our revenues."
- *Effect* for create: "We will effect a lien on her property."

Agreement with companies, committees, and law firms

- In American English, these collective nouns are treated as singular, not plural.

Agreement with *neither*, *either*, and *each*

- *Neither*, *either*, and *each* are singular, not plural:

  Right: "Neither of the officers has filed for compensation."
  Right: "Each of the attorneys in your jurisdiction is subject to the same . . ."

- Exception: With *either-or* and *neither-nor* constructions, the verb is plural if the second item in the pair is plural: "Neither the statute nor its implementing regulations apply here."

Amount vs. *number*

- *Amount* for things you can measure, like time or money or oil.
- *Number* for things you can count.

And, *but*, *yet*, and *because* to start sentences

- *But*, *yet*, and *because* are acceptable at the beginning of a sentence.
- *And* is also acceptable at the beginning of a sentence, but use it sparingly.
- Avoid *and* at the beginning of a paragraph.
- When you start a sentence with *and*, *but*, or *yet*, don't use a comma. The purpose of these punchy conjunctions is to push the reader into the sentence. A comma stops the flow.

As vs. *like*

- *As* to compare actions: "He approaches this issue as the CFO does."
- *Like* to compare things: "The report is like last year's."

As if or *as though* vs. *like*

- When you are comparing what people do rather than what they are, use *as if* or *as though*: "He approaches this issue as if he were the CFO."

As such

- *As such* does not mean "therefore"; it means "in that role or capacity." So don't write "You are a liar. As such, I don't believe anything you say." You could, however, write "You are a liar. As such, you cannot be believed."

Assure vs. *ensure* vs. *insure*

- You *assure* someone; you *ensure* something.
- *Insure* is only for indemnification and insurance.

Because vs. *since*

- *Because* for cause: "You are entitled to damages because the bank lost your check."
- *Since* for time: "You have been entitled to damages since the bank first lost your check."

Comparisons

- With *like*, *unlike*, and *similar to*, make sure you're comparing things that can be compared. So don't write "Unlike *Roe*, the plaintiff in this case did not . . ."

Comprise vs. *is comprised of* vs. *compose*

- The whole "comprises" the parts; the parts "compose" the whole.

Different from vs. *different than*

- *Different from* for things or people: "Chicago lawyers are different from New York lawyers."
- *Different than* for phrases or verbs: "New York lawyers are different today than they were a decade ago."

E.g. vs. *i.e.*

- *E.g.* means "for example."
- *I.e.* means "that is" or "in other words."

Farther vs. *further*

- Use *farther* only for physical space.

Fewer vs. *less*

- *Fewer* for things you can count.
- *Less* for things you can measure, like time or money.

Historic vs. *historical*

- *Historic* is used to describe something that changes history; *historical* refers to something that happened in the past.

However

- A midsentence *however* goes after the word or phrase that contrasts with the previous sentence: "You may not suspend payments on individual policies. You may, however, suspend . . ." (contrast is between what you can do and what you cannot do).
- To avoid issues over whether you can start a sentence with *however* as a transition, consider changing *however* to *but* or *yet*, or moving *however* to later in the sentence.

Like vs. *such as*

- Introduce examples with *such as*, not *like*.

Nor

- You can use *nor* in two ways:

    1. As a correlative conjunction with *neither*: "Neither a borrower nor a lender is."
    2. As a coordinating conjunction that introduces a negative example that contains both a subject and a verb: "I don't like zucchini, nor do I like spinach."

- But you cannot use *nor* with *not* to introduce another noun ("The company did not provide X nor Y.").

Notwithstanding

- Avoid *notwithstanding that* as in "Notwithstanding that the Court addressed this issue." Try "Even though the Court" or "Although the Court."
- Use *notwithstanding*, if at all, only before a noun (in agreements, for example): "notwithstanding anything herein to the contrary."

Only

- *Only* goes before the contrast or limitation; *only* often appears too early in a sentence.
- Tip: Place *only* where you'd put *but only*: "You can appeal only two times," not "You can only appeal two times."

Principal vs. *principle*

- Use *principle* only for an idea: "According to conflict-of-law principles."
- Otherwise, use *principal*: "principal and agent," "principal and interest," "the principal reason for our decision."

Such

- Avoid *such* for "the," "this," "these," or "those."
- Use *such* when it means "examples like this."

That

- To avoid miscues, include *that* after such words as *stated, held, noted*, and *provides*: "The court held the petitioner had failed to prove . . ." (Did the court hug the petitioner?)

That vs. *which*

- *That* is for restrictive clauses, which are essential to the meaning of the word or phrase they modify: "Last night, I read the book that you recommended." (Without "you recommended," the reader would not know which book the writer meant.)
- *Which* is for nonrestrictive clauses, which are not essential to the meaning of the word or phrase they modify: "Last night, I read a good book, which made me think that I should read more legal thrillers." (The "made me think" clause is not essential to understanding what the writer did last night.)
- A helpful test: Use "*which*" preceded by a comma if you would pause when reading the sentence out loud. If you wouldn't pause, use *that*.

That vs. *who*

- *That* for things and animals: "the legislation that lost support," "the dog that ran away."
- *Who* for people: "the scholar who lost his temper."

United States vs. *U.S.* vs. *US*

- Spell out *United States* when using it as a noun: "The United States has yet to ratify the Kyoto Protocol."
- Use *U.S.* only as an adjective: "The U.S. involvement in negotiations has . . ."
- *US* is more common in British English.

Was vs. *were*

- Use *were*, not *was*, when you refer to a hypothetical situation (one of the times you need the subjunctive).
- Remember this: What's the famous line from *Fiddler on the Roof*? "If I was a rich man"? But he's not rich, so it's "If I were a rich man."

Who vs. *whom*

- Tip: Rephrase the sentence and add *he* or *him* as appropriate. If *he* works, use *who*. If *him* works, use *whom*. Example: "He is someone who the authorities believe has committed a crime." It's *who* because you'd say "The authorities believe that he committed a crime."

Punctuation

Punctuating quoted material

- Periods and commas go inside quotation marks.
- No exception for a single word.
- Semicolons and colons go outside quotation marks.
- Question marks go inside if the quotation itself is a question.

Punctuating lists

- Use a colon only if the lead-in could stand as a sentence on its own. Enumeration does not change this rule.
- If any item in a list contains commas, separate all items with semicolons.
- Avoid using a dash to introduce a list (use a colon instead).

Serial commas (comma before the final *and* or *or*)

- For clarity and consistency, use a comma before *and* or *or* in a series of three or more items.

Commas and dates

- No comma between a month and a year.
- Although the *Chicago Manual of Style* requires setting off years in full dates with commas, lawyers most often use a comma only before the year, not after it.

Commas around *thus* and *therefore*

- No commas around a midsentence *thus* or *therefore*.

Commas around *however*

- When the contrast is with the previous sentence, set off *however* with commas: "I like you a lot. I'm busy at work, however, and have no time to date."
- When the contrast is within the sentence, set off *however* with a semicolon and a comma: "I like you a lot; however, I'm too busy to date."

Commas before participles (the *-ing* form of verbs)

- Use a comma if you want to modify the entire preceding phrase: "The Court stressed the lack of funds, holding . . ." (comma because *holding* modifies the entire preceding phrase).
- Avoid a comma if you just want to modify the preceding word: "The Court addressed its earlier opinion holding that . . ." (no comma because *holding* modifies *opinion*).

Commas in compound sentences

- A compound sentence typically contains two clauses that are usually joined with *and* or *but*. If the clause after the *and* or *but* could stand on its own as a sentence, you need a comma before the *and* or *but.*

Wrong: *"She's running late, but may still be able to attend the meeting."
Right: "She's running late but may still be able to attend the meeting."
Wrong: *"This firm is a great place to work and I hope to stay here forever."
Right: "This firm is a great place to work, and I hope to stay here forever."

Commas after introductory phrases

- Set off introductory phrases with commas: "Two days later, I called her again."

Ellipses

- Use an ellipsis in place of words that are missing from the start or middle of a sentence.
- Use an ellipsis and a period when the missing words are at the end of a sentence.

Footnotes

- Footnotes go after commas, parentheses, brackets, and other punctuation marks, not before.

Hyphenation in multiword phrases (the "phrasal adjective" or "compound modifier")

- Hyphenate multiword phrases that precede the noun they modify: "She's one of those judges who hates the fraud-on-the-market theory." The trend is to move away from hyphenating these phrasal adjectives, however, especially with familiar terms like "high school graduate."
- But no hyphen after an adverb ending in *-ly*: "We attended our regularly scheduled lunchtime meeting."

Semicolons

- Use semicolons to join two clauses that reflect a comparison or contrast. Avoid semicolons to join ideas that are not logically related.
- Avoid *however*, *therefore*, and other transitions after a semicolon. The comparison or contrast should speak for itself.

Capitalization

Capitalizing headings (title case)

- In general, capitalize all words, including short verb forms like *is*, *are*, and other forms of *to be*.
- Lowercase articles (*a*, *an*, *the*) and conjunctions (*and*, *but*, *for*, *or*, *nor*).
- Lowercase prepositions (*on*, *in*, *of*) unless the prepositions are five letters or more (*about*, *among*, *between*).
- Capitalize prepositions that are part of an idiomatic expression (Start Off, Wind Down).

Capitalizing *court*, *defendant*, and *plaintiff*

- Capitalize *court* only if (1) you are addressing the court that you're in or (2) you are referring to the U.S. Supreme Court.
- Capitalize *plaintiff*, *defendant*, *petitioner*, *respondent*, *debtor*, and *creditor* only if you're referring to a party in your own litigation or transaction.

Capitalizing *federal* and *state*

- Not capitalized unless part of an official state (so "federal law," "state law").

Possessives

Compound possessives (more than one party "owns" something)

- Distinguish between "joint" ownership (only the last party takes the possessive form) and "several" ownership (each party takes the possessive form).
- Making a mistake here can change the meaning: "We need to consider the Committee's and the Debtor's positions" (the Committee and the Debtor have different positions) vs. "We need to consider the Committee and the Debtor's position" (the Committee and the Debtor share the same position).

Plural possessives

- The possessive of a plural noun takes a single apostrophe ("courts' general adherence to precedent").

Possessive gerunds

- When you use the *-ing* form of the verb to refer to an act, the resulting gerund is a noun and thus "belongs" to the party: "I appreciate your coming to this meeting."

Singular possessives

- To make a possessive out of a singular noun (including a name) that ends in an *s*, such as *Jones*, add *'s*.
- Exception: Biblical, classical, or mythological names such as *Jesus'* or *Achilles'*.

Numbers

Writing out vs. digits

- Write out the numbers one through ten; use digits for 11 or more. Two exceptions:
  1. Never start a sentence with a digit: "Twenty-two parties intervened in this matter" is correct.
  2. If you have more than one number in the same sentence, treat all the same way: "I want to order two widgets and eleven gadgets."
- No need to follow a written-out number with a digit in parentheses. So don't write "I bought three (3) cookies today."

Other Issues

Active vs. passive voice

- The passive has nothing to do with the past tense. It occurs when (1) the object becomes the subject, (2) you conjugate "to be," and (3) you have a past participle: "The goal [1] was [2] reached [3] by me."
- Use the passive when the actor is self-evident or unimportant ("The motion was denied") or when you want to keep the subject the same throughout the sentence ("The regulation applies to hedge funds, but it has yet to be tested by the courts").
- Otherwise, use the active voice.
- Do not use the passive to hide bad facts: "The contract was breached by the client." This technique tends to draw more attention, not less.

Articles with acronyms

- Consider how the acronym is pronounced, not how it looks: "an FCC decision."

Articles with defined terms

- When you define a term, omit the article (*a, an,* or *the*) in your definition.

Dangling participles ("Running to court, the file fell out of my hands.")

- Make sure your participial phrases modify the word or phrase that follows.

Parallelism in phrases

- Be careful with *neither-nor*, *either-or*, *not only–but also*, and *both*. So write ". . . supported by neither the Agency nor the intervenors," not ". . . neither supported by the Agency nor the intervenors."

Parallelism in lists

- Make sure that all items in a list match up: "Counsel has concluded that the liens are valid, they were properly perfected under U.S. law, and they attach to Company's interests."

Parenthetical form

- An explanatory parenthetical should fall into one of two categories:
  1. It starts with a present participle (*-ing* word) relating to what courts do, such as "holding," "affirming," or "rejecting": (finding that the secured lender was . . .). See the list of examples later in this Toolkit.
  2. It consists of a single-sentence quotation.
- Some lawyers cut articles (*a, an, the*) and other short words from their parentheticals. Just be consistent.
- Avoid parenthetical remarks *within* parentheticals: (holding that the Insurer (a Delaware company) had an obligation to . . .).

Prepositions

- You can end sentences with prepositions that are part of an idiomatic expression: "This is the sort of behavior I refuse to put up with."

Split infinitives

- In general, avoid splitting infinitives, but always do so for clarity ("Plaintiff has failed to properly allege damages . . .").

Split-verb phrases

- Split-verb phrases are always proper ("She has already made that point . . .").

Citation Format

Cases

Sager v. Maass, 907 F. Supp. 1412, 1415 (D. Or. 1995) (holding that trial court's failure to warn petitioner about dangers of self-representation is reversible error), *aff'd*, 84 F.3d 1212 (9th Cir. 1996).	• Short form: *Sager*, 907 F. Supp. at 1415. • Short form: *Id.* at 1415. • Table T.8: explanatory phrases. • Table T.7: court names and abbreviations. • Rule 1.2: *See Sager . . .* or *See, e.g., Sager . . .*
United States v. Morrison, 529 U.S. 598, 664 (2000) (Breyer, J., dissenting) (citing *City of Boerne v. Flores*, 521 U.S. 507, 518 (1997)) (noting Congress's power to enact remedial legislation that prohibits constitutional conduct).	• Order of parentheticals: (1) weight of authority, (2) citing or quoting, (3) explanatory. • When citing U.S. Supreme Court or state's highest court, provide only the year.

Statutes

Brady Handgun Violence Prevention Act § 1, 18 U.S.C. § 921 (2000).	• Short form: § 1. • Short form: 18 U.S.C. § 921. • Short form: Brady Handgun Violence Prevention Act § 1.
Fla. Stat. § 775.10 (2000).	• Table T.1: statute abbreviations.

Internet Sources

Bush v. Gore, 531 U.S. 98 (2000), https://supreme.justia.com/cases/federal/us/531/98/#104	• Cite print source first.
Eric Posner, *What the Efficient Performance Hypothesis Means for Contracts Scholarship*, Yale Law Journal (July 23, 2007), https://www.yalelawjournal.org/forum/what-the-efficient-performance-hypothesis-means-for-contracts-scholarship	• When a source is only online, cite (1) author, (2) web page title, (3) website title, (4) post date, (5) post time for web pages that are updated daily, and (6) URL. • If no post date is provided, after URL, write "(last updated Aug. 20, 2007)," if available, or "(last visited Oct. 1, 2008)."
S. Rep. No. 92-21 (1971), *reprinted in* 1971 U.S.C.C.A.N. 1023, 1971 WL 11313.	• Legislative material. • Name database and any codes or numbers that would identify the material.

Source: *The Bluebook: A Uniform System of Citation* (Harvard Law Review Association, 20th ed. 2018).

URL Shorteners; Avoiding Link Rot

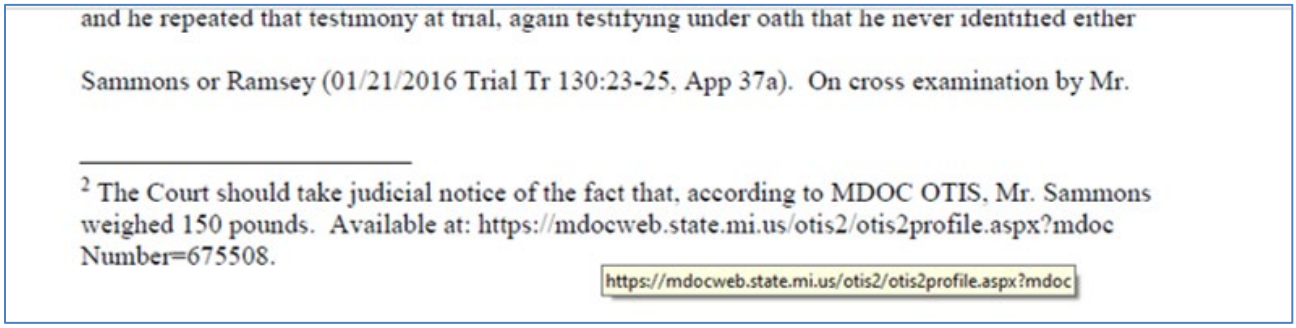
URL shorteners

Whether you call it a URL (Uniform Resource Locator), a web address, or a hyperlink, pasting a long one into your document is an invitation for trouble. The hyperlink can break and become electronically inoperable at paragraph breaks. And if your readers are reading from a printed version of your work, they are never going to type a long address into their browser.

Both problems are solved when you instead use a shortener available from websites such as

Bit.ly	Rebrand.ly
Bl.ink	TinyURL.com
Perma.cc *	Tiny.cc

Notice the broken hyperlink in this brief filed in a state supreme court? The long hyperlink spilled into two lines and you can tell that the link is broken by the partial link that appears during a mouseover.



In this example, the court was asked to take judicial notice of something when (a) the long hyperlink does not work when selected and, (b) no jurist reading from paper will type that long address into their browser.

The problem could have been avoided if the attorney had visited a URL shortener such as http://bit.ly and pasted the long URL into the site to create the shortened link http://bit.ly/2kJVmut for pasting into the document.

Avoiding link rot

To eliminate the real risk of your letter or brief's linked webpage being changed, moved, or disabled, consider creating an account with perma.cc.* Its site explains "Perma.cc is a service that helps prevent link rot. Use it to preserve the online sources you cite and to make those records accessible to your readers."

Commonly Used Microsoft Symbol Codes

Here are Microsoft codes for some of the commonly used symbols. Adding this as a note on your desktop for easy reference can shave off minutes you'd otherwise spend searching for the symbols through the Symbols menu.

Note that these functions also work when typing into Twitter, Facebook, and LinkedIn from your desktop or laptop.

—	alt 0151	em dash
–	alt 0150	en dash
…	alt 0133	ellipsis
“	alt 0147	opening double quote
”	alt 0148	closing double quote
¶	alt 0182	paragraph mark
§	alt 0167	section mark
™	alt 0153	trademark
®	alt 0174	registered trademark
©	alt 0169	copyright
÷	alt 0247	division sign
×	alt 0215	multiplication sign
¢	alt 0162	cent sign

P-cubed: Possible Participles for Parentheticals

Consider these ways to begin explanatory parentheticals.

acknowledging
addressing
admitting
adopting
affirming
applying
approving
arguing
assessing
authorizing
awarding
balancing
cautioning
characterizing
charging
citing
collecting
conceding
concluding
conferring
considering
declining
deferring
defining
denying
describing
discussing
dismissing
distinguishing
emphasizing
equating
excluding
explaining
extending
finding
granting
holding
identifying
interpreting
invalidating
listing
naming
noting
objecting
observing
ordering
outlining
pointing out
prohibiting
providing
quoting
recognizing
refusing
reinstating
rejecting
relying
renouncing
requiring
responding
reversing
ruling
stating
striking
summarizing
supporting
taking
upholding
vacating

