



COPYWRITING FOR ATTORNEYS

A PracticePanther CLE Course

THE PROFESSOR IS IN

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We Need to Talk About...

1. Grammar
2. Writing Styles & Techniques
 1. Prewriting
 2. Drafting
 3. Passive vs Active Voice
 4. Summary vs Analysis
 5. Etc.
3. Legal Documents
 1. Briefs
 2. Emails
 3. Motions



INTRODUCTION: DEFINING EFFECTIVE LEGAL WRITING

LEGAL LANGUAGE: FUNCTIONS, FEATURES, VARIETIES, CHARACTERISTICS

Functions of legal language

- To establish rights and obligations
- To distribute information
- To enable communication within the legal profession

UNIVERSAL FEATURES OF LEGAL LANGUAGE

1. Extreme precision
2. Obscurity, ambiguity
3. Archaism (structures and vocabulary)
4. Formalism, ritualism, ceremonialism
5. Wordiness, redundancy
6. Lengthy and complex sentences (embeddings)
7. Impersonal constructions (passive)
8. Terms of art, technical terminology

CHARACTERISTICS OF LEGAL ENGLISH

1. Common words with specialist meaning
2. Old or middle English words
3. Latin words and phrases
4. Words of French origin
5. Terms of art
6. Argot
7. Formal words
8. Words and expressions with flexible meaning
9. Extreme precision
10. Many words where one will do

CHARACTERISTICS OF GOOD LEGAL WRITING

- | | |
|-----------------|-------------------------------------|
| 1. Conciseness | A. Accurate + analytical |
| 2. Completeness | B. Relevant + organized |
| 3. Courtesy | C. Thorough + specific and concrete |
| 4. Clarity | D. Logical + correct |
| 5. Correctness | E. Persuasive + clear |

GUIDELINES FOR BETTER LEGAL ENGLISH

1. Match function and style of the text according to the reader
2. Avoid long and embedded sentences
3. Avoid complex structures
4. Use active instead of passive, if possible
5. Avoid double negatives, exceptions to exceptions
6. Avoid unnecessary synonym pairs (e.g., null and void)
7. Use technical legal terms only when necessary, avoid jargon
8. Avoid Latin and foreign words if possible

A MODEL OF THE WRITING PROCESS

Prewriting:

- Clarify objectives
- Define reader
- Establish scope

Information:

- Collect information
- Tailor it to your audience

Organization:

- Determine organizational pattern, paragraph topics
- Compare it to the objective, reader and information

Drafting:

- Put information into sentence form
- Put paragraphs into organizational pattern

Revision:

- Revise globally in terms of objectives, information, and organization.
Revise locally (one sentence at a time) for conciseness, coherence, clarity, and correctness.

Summary vs Analysis

ANALYSIS is examination, evaluation, dissection, interpretation, original opinion, reading between the lines, connecting to other knowledge, etc. It is the goal of some legal writing. The analyzer starts with a quotation or question and uses it to show his/her understating and interpretation.

SUMMARY is recapitulation, review, retelling a story or scene without original thoughts or interpretations. Summary is not the goal of most legal writing. It is usually easier than analysis because it requires less thought.

Here is an example of summary (to be avoided) and analysis (to be practiced):

As Gatsby is driving Nick to lunch, he notices a change in his manner; “We hadn’t reached West Egg Village before Gatsby began leaving his elegant sentences unfinished and slapping himself indecisively on the knee of his caramel-colored suit. ‘Look here, old sport,’ he broke out surprisingly. What’s your opinion of me anyhow?”(69).

Summary: Nick is riding with Gatsby to lunch. He notices that Gatsby is speaking differently, leaving his sentences unfinished. Gatsby asks Nick what he thinks of him.

(Notice that there is no opinion or interpretation in this statement. It adds nothing to our understanding of the passage.)

Analysis: In this scene, we see a break in Gatsby's affected calm. Nick had noticed previously that he "pick[ed] his words with care"(53); now he leaves sentences unfinished. His agitation is seen also in his physical movements, as he "slap[s] himself indecisively on the knee"(69). Gatsby is making plans to meet Daisy again, and his change in manner is brought on by his nervousness about seeing her. Gatsby's insecurity about what Daisy might think of him after all these years leads him to ask Nick for his opinion of him, a fact which surprises Nick because it is such a change from Gatsby's usual aloof confidence. In fact, Gatsby is so rattled as he draws near the critical moment in achieving his dream that he is unable even to be direct with Nick. Instead of just asking him if Nick would plan a meeting, he arranges for "Miss Baker [to] speak to [him] about this matter"(72). This is a crucial moment in Gatsby's life, and its weight is illustrated in his unusual behavior.

(Notice that the writer has used the passage to illustrate important changes in the character. The writer uses specific examples and ties the passage to other moments in the book.)



LEGAL WRITING: BASIC PRINCIPLES

PLAIN ENGLISH FOR LAWYERS

1. Avoid over-technical terms and over-complicated expressions.
2. Where possible, eliminate Latin and foreign words.
3. Eliminate archaic terms.
4. Eliminate legal pairs and triplets.

EFFECTIVE WRITING: INGREDIENTS

1. MAIN IDEA
2. ORGANIZATION
3. SUPPORTING MATERIAL
4. EXPRESSION, WORD CHOICE AND POINT OF VIEW
5. SPELLING, GRAMMAR, AND PUNCTUATION

PARAGRAPH ORGANIZATION

Different languages, different cultures : different approaches to structuring texts, including legal texts.

English paragraph structure: logical and organized

First sentence of each paragraph is called the 'topic sentence'. This tells the reader what the paragraph is about.

Sentences following either:

- support the topic sentence (opinion), or
- develop the topic sentence (process or situation)

Paragraphs may also contain sum-up sentence

THE SIX RULES OF GOOD LEGAL WRITING

1. Have a point
2. Get the point
3. Adopt a Structure For Your Analysis That Will Allow You to Integrate the Facts, Court Analysis, and Policies Into the Body of Your Argument
4. Break Your Analysis Up Into Its Component Parts and Develop Them Separately, But In An Organized Way
5. Adopt a Measured Tone
6. Be Concrete and Simplify Whenever Possible

1. Have a Point

In order to write a good legal analysis, you've got to have a point (that is, a thesis) you want to make.

There are two problems lawyers run in to when trying to have a point:

1. They do not have a point. There are two main subcategories of this problem:
 - I. one is being very descriptive about one's topic, that is, surveying rather than analyzing it;
 - II. the other is demonstrating the author's ambivalence about the issue.
2. The other sort of problem is to have too many points.
 - a) Very few people can write in any depth about more than one major issue at a time.
 - b) The aim is to explore one thing (your thesis) in depth

2. Get to the Point

Tell your reader what the point is in your first paragraph.

You should start your analysis of the thesis ASAP, not on page twenty or thirty.

Remind your reader of your thesis as you go along by such means as section titles and transitional sentences.

3. Adopt a Structure For Your Analysis

Here's an example of a bad structure:

- I. **Introduction** (general subject matter, if it mentions the thesis, it often does it in a sentence tucked)
- II. **Background** (This is often an overview of some of the historical context of the problem and/or of legal concepts, similar to an encyclopedia entry)
- III. **Facts** (Often this is a recitation of 'the facts' often meanders through the odds and ends of the case, often giving many more facts than is necessary to make the analytic point)
- IV. **Court Decision(s)** (This is usually a report with little attention paid to the issues pertinent to the discussion)
- V. **Analysis** (Finally. The author now attacks court A for this and court B for that, repeating everything you have just said, inadequately developing anything in terms of their relationships to one another.)
- VI. **Policy** (If law students mention the policy implications of their thesis at all, the policy issues are trotted out in a page or so near the end)
- VII. **Conclusion** (This is often a rather mechanical repetition of the kernel of the analysis from Section V. It rarely contains anything new or interesting.)

4. Break Your Analysis Up

One can only analyze an issue in an organized way. There many ways to organize the analysis of any thesis, but all good ways have this in common:

- One's analysis must be broken down into component parts, and each element must be examined and developed in an orderly and integrated way.
- The structure of your paper should reflect the basic components of the argument which has to be made to support your thesis.

Tips:

- Do make an outline before you begin to write.
- Try not to have more than three basic elements in your argument.
- Allow yourself to revise

5. Adopt a Measured Tone

The importance of tone is often overlooked by writers (not just lawyers). Think about whom you want to persuade of the point you're making in the paper.

In legal papers, it is generally a good idea to adopt a tone of measured rationality.

- Too forceful will make the reader angry, but it will also distract him or her from perceiving the merit of your argument.
- Too colloquial will make the reader think you are not really taking the issue seriously and make them doubt whether they can gain anything by reading what you have to say about the matter.

6. Be Concrete and Simplify Whenever Possible

Whenever there is a choice between saying something in an abstract way or saying it in a concrete way, opt for the concrete expression. Or, if you feel you must speak abstractly, at least give a concrete example to illustrate the abstract point.

The more complicated your argument is, the harder it will be for your reader to follow it. That's why if there's a simpler way to develop your argument, use it.

Don't try to impress your reader with fancy words and long, complex sentences structures.

OTHER RULES OF GOOD LEGAL WRITING

1. Write a Strong Introduction
2. Make Your Case Discussions As Thorough and Yet Brief As Possible
3. Have a Strong Opening Line into Case Discussions
4. Make Transitions Smoothly
5. Resolve Issues as You Go Along and at the End of the Paper
6. Make Use of Footnotes for a Variety of Purposes
7. Never End a Paragraph or a Section With a Quotation
8. Keep Your Quotations Short and to the Point
9. Keep Your Writing Simple
10. Be Attentive to Proper Form
11. Consider the Policy Implications of Your Thesis

1. Write a Introduction

The introduction to a legal analysis, brief, motion, etc. is a roadmap that will guide the audience through the major themes that will recur throughout the document.

Good legal writing will let the reader(s) know your destination (your thesis) and your intended route to it (the component elements of your analysis in the order you'll develop them).

The introduction is you best chance to really hold the reader's attention.

2. Make Your Case Discussions As Thorough and Yet Brief As Possible

Disembodied rules extracted from cases are virtually worthless. To understand why a rule makes sense, one must understand the particular circumstances in which the rule was applied and the considerations which attended that application.

Therefore, never mention a case in the text of your legal document unless you describe at least briefly the context from which the principle you are interested in emerged. If it is an important case, more of the circumstances should be discussed. If the context is not worth discussing, the case is not worth mentioning in the text, although it may be worth a footnote

3. Have a Strong Opening Line into Case Discussions

There are few things more boring than a twenty page brief consisting of page after page of a case discussion in which each paragraph begins: 'In A v. B . . .'; 'In C v. D . . .'; 'In E v. F . . .'

Add a little zip to these paragraphs by a strong lead-in sentence. Use the opening line to give the reader some clue about what's interesting about the case. In other words, what's the point of discussing the case?

4. & 5. Transitions & Resolving Issues

One often writes paragraphs in chunks. The first rough draft may be an assemblage of these chunks. One's main concern when writing a rough draft is to get the chunks into some semblance of order.

Write transitional sentences to tie one chunk to the next. The paper should flow, not start and stop abruptly.

Another transition problem, occurs when a writer goes back and forth about pros and cons of an issue and then goes on to another issue.

Your reader needs a sense of closure on one issue before you go on to the next. In concluding your discussion of an issue, pull all the strands of your argument together and give that part of the piece a resolution.

6. Make Use of Footnotes

Footnotes can be useful for a wide range of purposes:

1. to give the reader an instance illustrating a generalization you make in the text (that's what the 'See, e.g., X v. Y . . . ' is about);
2. to send the reader to source materials about a particular subject;
3. to demonstrate additional depth in your research and to give credit to those whose thinking has influenced you;
4. to demonstrate the depth of your understanding of the complexities of a subject;
5. to raise issues which are related to the main thesis of your paper but which would seem digressions if developed in the text; and
6. to raise and address some potential objections your reader may have about your thesis that you judge do not need to be developed at length in the paper, but cannot be ignored.

7. & 8. Quotations

A quotation at the end of a paragraph or a section looks lazy, as if you couldn't summon the energy to finish saying what you intended to say. You must tie any quotation into your argument and emphasize the point for which the quotation has been included in the text.

Long quotations look like a lazy way to make a paper long. A good general rule is that you should have no more than ten continuous lines of indented single-spaced quotation in your text at any one time.

9. & 10. Simplicity and Form

It is tempting to use the fancy, complex literary flourishes of most legal texts. This does not make you sound smarter. Keep it simple, to the point, and clear.

In legal writing, form is part of the substance. If you are sloppy about your form, your reader will assume you may well be sloppy as to the substance as well.

A few particular form rules:

1. Always cite cases and statutes in proper *Bluebook* form. It is your responsibility to teach yourself the form rules.
2. Never split infinitives.
3. Spell all the words in your document correctly.
4. Don't get cute about personal pronouns. ('He' or 'he/she' or 'he or she' is ok; 'she' is too cute.)
5. Watch out for run-on sentences, spelling, grammar, diction, etc. You can't afford to take the chance of your argument being dismissed because of your sloppiness about the little things.

11. Consider the Policy Implications of Your Thesis

Questions you should address include the following:

- What effect would the rule you propose have on the way the world works?
- What effect would a contrary rule have?
- Is the intended effect achievable?
- Is the effect you seek to bring about worth the cost?
- What consequences besides the ones you intend are likely to result from the rule you espouse?

Words have power. They often serve as a basis for action, and, when carried out, they have an effect on your client and society. You have a responsibility to use your words to do good and to persuade others you are doing good.

People don't adopt rules just because they are clear or consistent; they adopt rules because they make sense in ordering human affairs.

Punctuation Matters

"Punctuation is a courtesy designed to help readers understand a story without stumbling."

-Lynne Truss,
Eats, Shoots & Leaves



Pop quiz!!!

HOW MANY ERRORS ARE THERE IN THE FOLLOWING SENTENCE?

Mr. Silvertown of Silvertown Commodities LLC ("The Company") requested that we furnish you with a list of matters, with which we have been engaged, including; Forest Enterprises, Spacely Construction and Brown Recycling.

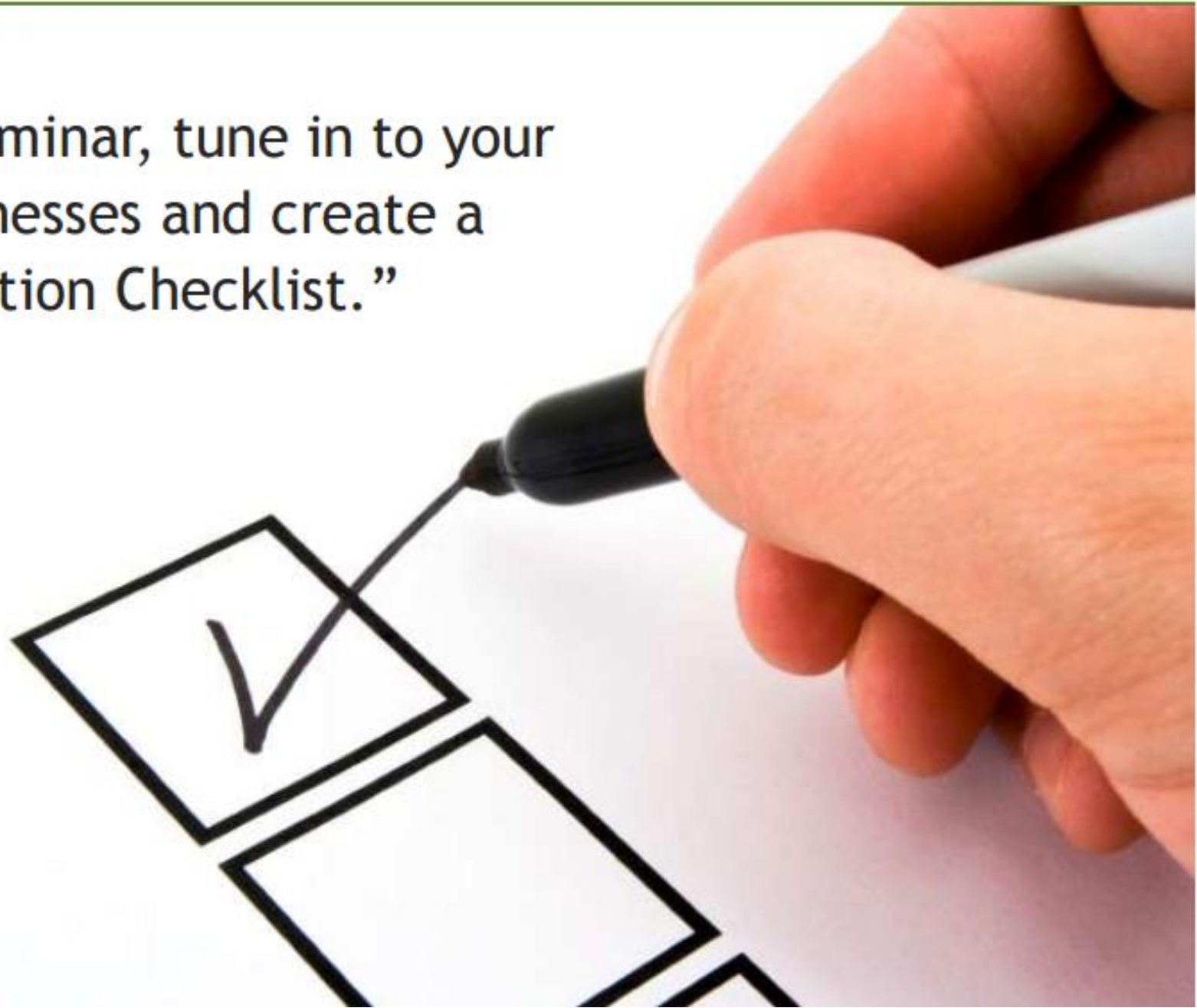
- A - None
- B - Two
- C - Three
- D - At least four

Answer: D, at least four (the last comma is the optional “Oxford comma”).

Mr. Silverton, of Silverton Commodities, LLC (“The Company”), requested that we furnish you with a list of matters with which we have been engaged, including: Forest Enterprises, Spacely Construction, and Brown Recycling.

Throughout the seminar, tune in to your own writing weaknesses and create a “Personal Punctuation Checklist.”

- Commas
- Colons
- Semicolons
- Apostrophes
- Dashes
- Hyphens
- Quotations
- Exclamation Points



Commas with Conjunctions

When separating two independent clauses joined by a conjunction (and, but, for, or, nor, ...)

Examples:

1. The defense was inadequate, but an effective appeal is still possible.
2. The results are misleading, and they must be ignored.



But not...

Between a compound verb

Examples:

1. The lawyer filed the brief and served opposing counsel.
2. The firm received the invoice and processed it for payment.

Tip: One subject doing two actions is a compound verb.



Commas with Introductory Elements

To set off an introductory element (e.g., a transitional term, or a participial, infinitive, or prepositional phrase)

Examples:

1. While we were eating, a skunk appeared.
2. Laughing out loud, she disturbed the class.
3. To unlock the safe, you'll need a code.
4. Although she has retired, she is still active.
5. In the majority of cases, the insured is covered.

TIP: Delete the introductory element and if what remains is a complete sentence, the deleted material is an "introductory element."



But they are optional with...

Short prepositional phrases of fewer than three or four words - if not confusing to the reader

Example:

1. Around midnight the pumpkin carriage arrived.

After single word adverbs:

Example:

1. Soon it will start to snow.



Commas with Nonessential Clauses

To set apart nonessential adjective clauses ("interrupters")

Example:

1. Congress, not the court, should change the law.

TIP: Clauses that are nonessential and nonrestrictive (i.e., just provide additional meaning about the modified noun but do not change its meaning) are set off with commas.



But not...

To set off restrictive (necessary/defining) clauses

Example:

1. All legislators who are members of the Democratic party will likely sign the bill.

TIP: On the other hand, adjective clauses that change the meaning of the noun they modify by limiting it or restricting it in a significant way are NOT set off with commas.



Pop quiz!!!

Is this sentence punctuated correctly?

The lawn mower, that is broken, is in the garage. But John is now using the other one to cut the grass.

A. Yes

B. No

Answer: B, no

The sentence is NOT punctuated correctly. Note the difference in the correctly punctuated sentences below.

1. The lawn mower that is broken is in the garage. But John is now using the other one to cut the grass. (Identifies the lawn mower – one of two.)
2. The lawn mower, which is broken, is in the garage. (Adds a fact about the only mower in question.)

Commas for Items in a Series

To separate items in a series (style rule, “Oxford comma”)

Example:

1. The burglar stole the victim’s credit cards, checks, and cash.

BUT NOT... After the last item in a series

Example:

1. The flyer promised a fuel-efficient, fast, elegant convertible.



Commas with Appositives

With a nonessential appositive, which is a noun or pronoun that renames the noun it follows

Examples:

1. The Representative from Massachusetts, a Democrat, voted for the bill. *(nonessential)*
2. Joyce's book Ulysses contains many poignant insights. *(essential)*

TIP: Like adjective clauses, appositives can be essential or nonessential. Essential appositives are set off with commas while nonessentials are not.



Commas with Names, Dates, and Addresses

To punctuate geographical names, dates, and addresses (but not before a zip code)

Example:

1. Plaintiff lives at 400 Commonwealth Avenue, Boston, Massachusetts 02117.

After the year in a date

Example:

1. She left for her vacation to Italy on September 4, 1998, and still has not returned.



Commas with Titles

Where titles follow a name

Example:

1. Andrea Banks, M.D., practices with Centre Pediatrics.
2. Filippo Grandi, UN High Commissioner for Refugees, spoke to the Assembly.



The Comma Splice

Watch out for commas placed where periods (or semicolons) belong

NO: We ate a huge meal, we slept afterwards.

YES: We ate a huge meal. We slept afterwards.

NO: She found the course challenging, however, she received a high grade.

YES: She found the course challenging; however, she received a high grade.

Semicolons

Semicolons separate major sentence elements of equal grammatical rank. Generally, use them when you have a complete clause on either side of the semicolon and cannot bear to split the clauses into separate sentences.

Example:

1. An important witness was out of the country; however, the trial took place without her.



Semicolons

TIP: Make sure to use a semicolon between independent clauses linked with a transitional expression (e.g., however, therefore, similarly, also, moreover).

NO: The artwork was extremely rare, however, it sold for only a few hundred dollars.

YES: The artwork was extremely rare; however, it sold for only a few hundred dollars.



Semicolons

Or as item separators

Example:

1. The Library has three important rules: 1) no talking; 2) no eating; and 3) no running.
2. **But NOT:** The Library has three important rules; 1) no talking; 2) no eating; and 3) no running.



Semicolons are NOT colons

Remember: Use colons to indicate more information follows (i.e., "that is to say" or "here's what I mean")

Examples:

1. Remember the rule: no running with scissors!

Incorrect: Many of the world's most dangerous creatures are indigenous to Australia; the black widow spider, the box jellyfish, and the Eastern brown snake.

Correct: Many of the world's most dangerous creatures are indigenous to Australia: the black widow spider, the box jellyfish, and the Eastern brown snake.



Semicolons are NOT commas

Incorrect: Six of the applicants had a background in writing; but only one was a journalism major.

Correct: Six of the applicants had a background in writing, but only one was a journalism major.

;

Apostrophes

Rule to form possessives:

- In general, if the word does not end in –s, form the plural by adding -'s.
 - *Sarah's house, the computer's cord*
- If it is singular and ends in –s, add –'s unless the result is hard to pronounce.
 - *a witness's testimony, Jones's claim*
- If it is plural and ends in 's, add –'.
 - *the participants' entry forms, the Joneses' claims, the lenses' cost*



Apostrophes

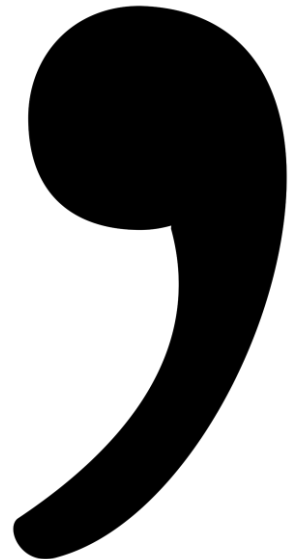
Joint possession requires only one 's

Example:

1. Jane and Charlie's apartment – one shared apartment

vs.

1. Jane's and Charlie's apartments – two apartments



Apostrophes and Contractions

Rule:

Use apostrophes to form contractions, but while we are on the topic of contractions, use them thoughtfully in formal legal writing.

Pay particular attention to contraction use in emails and other informal communication.

Mike's running late.

Mike is running late.



Apostrophes

Distinguish between its and it's

Example:

1. The car needs servicing because **it's** time to change the oil and **its** exterior is dirty.

Distinguish between there and they're

Example:

1. They're going to be late getting there.



Hyphens and Dashes Compared

- Hyphen - Shorter punctuation mark mainly used in compound words and to separate numbers
- Dash – Mainly used to indicate an interruption or abrupt change of thought (and often used in place of a comma)

TIP: Hyphens do not take spaces while dashes generally do.

- **300-450**
- **The weather – and its abrupt change – is remarkable.**



The dash

Use dashes to signal an abrupt break

Example:

1. The anxious applicant – thumbing through his resume – sat patiently in the waiting room.



Hyphenation

Generally, hyphenate two or more words when they come before a noun they modify and act as a single idea. This is called a “compound adjective.”

Examples:

- an off-campus apartment
- state-of-the-art design
- high school vs. high-school student
- popular music vs. popular-music critic

Hyphenation

Do not hyphenate prefixes

- Thus **pretrial, noncompete, antiterrorism, postjudgment, coworker**; not **pre-trial, non-compete, anti-terrorism, post-judgment, co-worker**.
- Exceptions
 - 1) When the noun or adjective after the prefix is a proper name (**anti-American, post-Obama, preVichy**)
 - 2) Where the lack of a hyphen would create confusion, either because of strange vowel combinations (**anti-inflammatory, extra-administrative, co-opt**) or because it would look like a different word without the hyphen (**re-sign** vs. **resign, co-op** vs. **coop**)

Quotations

“

Put commas and periods inside quotations

Other punctuation marks go outside, unless they are part of the quoted material

Example 1:

Emerging democracies should legislate by enacting broad laws, called “standards,” as well as by narrower ones, simply called “rules.”

Example 2:

Should emerging democracies legislate by enacting broad laws, called “standards,” or by a narrower ones, simply called “rules”?

”

Pop quiz!!!

Do you ever use exclamation points when writing in a legal/business context?

A. Yes

B. No

Exclamation Points Signal Tone

Rule:

Tone refers to the writer's attitude toward the reader. Exclamation points can set a tone of emotion, emphasis, or surprise.

Think about:

- The relationship with the reader
- The purpose of the communication
- The manner of communication (e.g., letter v. email)

Exclamation Points

Exclamation points show emotion, emphasis, or surprise.

Hi David,

I hope you are well and enjoyed your vacation in Cancun! I am attaching two copies of the Petition. Would you mind signing and notarizing them and then returning to me as soon as you can?

Thanks so much,

Eddy



Active vs passive voice

Active voice describes a sentence where the *subject performs the action* stated by the verb.

In passive voice sentences, the *subject is acted upon* by the verb.

Example:

1. Harry ate six shrimp at dinner. (active)
2. At dinner, six shrimp were eaten by Harry. (passive)
3. Beautiful giraffes roam the savannah. (active)
4. The savannah is roamed by beautiful giraffes. (passive)
5. Mom read the novel in one day. (active)
6. The novel was read by Mom in one day. (passive)

Review: Where are the errors?

Dear Joseph:

I received a message asking for an update regarding potential outstanding warrants, that you believe may be on your record. Since the matter was in Suffolk Superior Court and was recently resolved as indicated in a letter from your attorney you should reach out to him to confirm that any outstanding warrant in that matter was also resolved and he may have knowledge of the status of other outstanding warrants.

Best,

William

Corrected Version

Dear Joseph:

I received a message asking for an update regarding potential outstanding warrants (,) that you believe may be on your record. Since the matter was in Suffolk Superior Court and was recently resolved as indicated in a letter from your attorney, you should reach out to him to confirm that any outstanding warrant in that matter was also resolved, and he may have knowledge of the status of other outstanding warrants.

Best,

William

SUGGESTIONS FOR REVISING AND EDITING

1. Read out loud.
2. Omit needless words.
3. Rely primarily on action verbs and nouns.
4. Check for variety in sentence structure and length.
5. Make a topic sentence outline.
6. Ask a colleague to review your draft.



LEGAL WRITING: THE MECHANICS OF LEGAL DOCUMENTS

CASE BRIEFS

A good case brief succinctly and clearly summarizes the relevant facts, the legal issue presented, and the reasoning the court used to reach a decision on a case.

The case brief should serve as a road map of the court's legal analysis that shows how the court arrived at its decision.

1. Name of the case, court, & date
2. Facts of the case (relevant & brief)
3. Issues (key issues)
4. The court's holding (decision)
5. The court's reasoning (outline point by point in numbered sentences or paragraphs)
6. *Concurring and dissenting opinions*
7. *Analysis (even though this is a summary, add a section of your own observations & criticism)*

GOALS FOR GOOD LEGAL WRITING: BRIEFS

Read the case multiple times. Comprehension is key.

- Chain of argument which led the judges to rule as they did
- When noting issues, it may help to phrase them in terms of questions that can be answered with a precise “yes” or “no.”
- **DO NOT** fail to see the issues in terms of the applicable law or judicial doctrine

Critical Analysis: a good brief will examine the process the court took to reach its decision.

- Break the opinion down to its components (this is not merely summarizing)
- Focus only on relevant facts, identify the law, frame the main issues, and explain their answers.
- Keep in mind the goal of briefing the case



GOALS FOR GOOD LEGAL WRITING: BRIEFS

1. Lead with what matters
 - Officers arrested Mr. Smith and then questioned him without Miranda warnings. Their questions and Mr. Smith's answers must be suppressed.
2. Use story and theme. If not story and theme, at least focus.
 - There is no DUI-exception to Miranda. Officers arrested Mr. Smith. Without Miranda warnings, they then asked him "how much have you had to drink?" Officers told Mr. Smith that he had no right to counsel until after the breath testing. They were incorrect
3. State the law, then analyze.
 - Miranda applies where a person is (1) "in custody" and (2) subject to an "interrogation." A person who has been formally arrested is "in custody." "Interrogation" includes both express questioning and any police words or actions reasonably likely to elicit an incriminating testimonial response.
4. Cites are mandatory
5. Quotes are even better
6. Conclude with a concise statement of what you want
 - Mr. Smith requests the Court to suppress all statements arising out of officers' un-Mirandized questioning of Mr. Smith, specifically the period recorded from 5:23 to 6:12 on the DUI processing video.

GOALS FOR GOOD LEGAL WRITING: BRIEFS

Outlines save time

No DUI exception to *Miranda*

- Facts: arrested, questioned, no warnings, separate from BAC tests and request
- Miranda elements: custody + interrogation
 - Booking exception
 - Non-testimonial exception for BAC testing
- Smith arrested = custody
- Smith asked about drinking = interrogation
 - Not biographical booking question
 - Drinking? Is testimonial
 - Distinguish BAC tests and requests

1. Get all sections done, then worry about perfecting.
2. Good legal writing does take time and requires deliberate decision making
3. Cater to your judge
4. Speak with confidence: “must,” not “should” (persuasive)

AVOID THE COMMON FAULTS OF CASE BRIEFS:

Never accept the court's opinion as gospel

- Question the facts, issues, and reasoning for fallacies and logical flaws, manipulation of the factual record, or distortions of precedent.
- Then ask, How does this case relate to other cases in the same general area of law? What does it show about judicial policymaking? Does the result violate your sense of justice or fairness? How might it have been better decided?

Dicta is not law

- Look out for words or phrases such as *if*, *for example*, *suppose*, etc. that indicate that a statement is an example, analogy, or observation rather than relevant legal facts.

Do not skimp on the court's reasoning

- If your analysis of the court's reasoning is shallow, you could damage your credibility by using an opinion improperly.

AVOID THE COMMON FAULTS OF CASE BRIEFS:

Do not include too many details

- Your brief should be no longer than one, single-spaced page
- Eliminate trivial details like personal information about the parties
- Focus only on what has bearing on the court's reasoning or decision

Weak briefing methods

- Briefs are not your notes on the facts of a case. Do not forget to include an analysis or review of the reasoning.
- You shouldn't have to go back and forth between pages to understand something. Make the connection!
- **DO NOT** skim the syllabus and headnotes of case. Both only offer simple summary and no analysis or nuances.
- **DO NOT** ignore concurrences and dissents. They may reveal limits or weaknesses in the majority's reasoning.

EMAILS

Emails should be:

1. Short: say only what the recipient needs to know, but be clear
2. Direct: state the purpose of the email within the first few sentences
3. Polite: be direct but professional. Open with a brief, kind formality that avoids schmaltzy language.
4. Specific: provide only the information the recipient needs to act on your message- no more and no less.
5. Addressed to only those who actually need the information (be careful who you CC, Bcc, and Reply All to)
6. Specific and short with their subject lines



GOALS FOR GOOD LEGAL WRITING: EMAILS

Professionalism is key. Even quick emails should follow standard rules of grammar, punctuation, and style. You do not want clients to question your professional judgment.

Never bring a colloquial style to **any** legal writing. Proofread all your emails, even if you have an autocorrect feature e.g. *refilled* & *refiled*.

Follow your messages with a simple, professional signature block.

- Name, title, organization, email & phone number

Your signature block represents your professional identity in e-mails

1. Use the same font, size, and color as the body text-no decorative fonts
2. Edit the footers sent by a cellphone

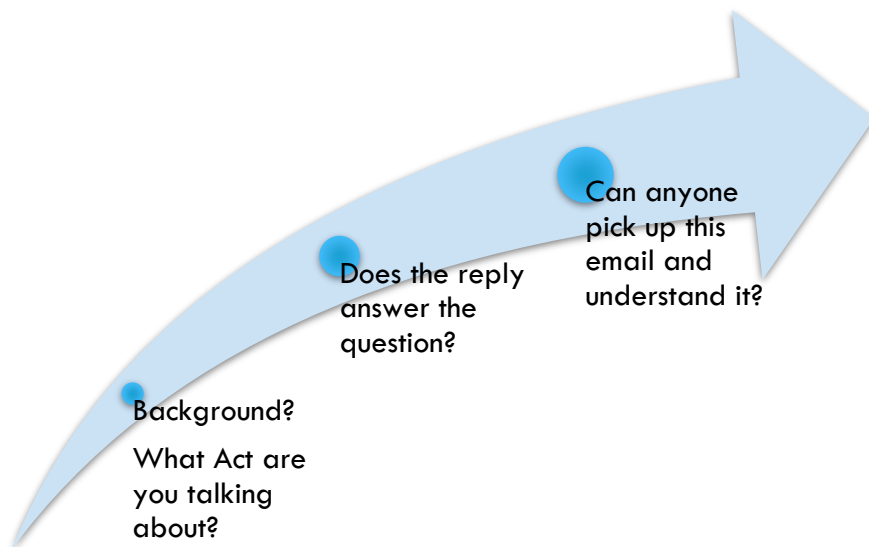
GOALS FOR GOOD LEGAL WRITING: EMAILS

You may report research in an email in lieu of a memo. However you must be precise and clear about the question being asked and the answer to that question. Avoid answering in a way that is sure to require further questions.

This is one exception to the brevity rule. Do not report your findings without restating the question and your summary should be thorough.

GOALS FOR GOOD LEGAL WRITING: EMAILS

Re: Meaning of “Sale” Under the Act. Please look into whether a “sale” actually took place on the evening of May 19.



Re: Meaning of “Sale” Under the Act. Almost certainly. Several witnesses have said McKnight furnished an inebriated person with alcohol in his establishment on May 19. Although McKnight may not have given the drinks directly to the inebriated person, the sale is imputed because he sold to a member of the party at the same table. Conn. Gen. Stat. Ann. § 30–102 (West 2011).

GOALS FOR GOOD LEGAL WRITING: EMAILS

Re: Meaning of “Sale” Under the Dram Shop Act.

Question

The Connecticut Dram Shop Act requires a “sale” from bartender to patron. Our client, Jeff Burton, is the owner of a one-room bar; he sold rounds of beer to a group of eight, one of whom witnesses have said was visibly intoxicated. Did the rounds of beer constitute a “sale” to all eight guests?

Re: Answer

Almost certainly. Connecticut courts have interpreted “sale” to mean “the purveying or furnishing of alcohol” to a person or group, any one of whom is visibly intoxicated. Specifically, the Connecticut Supreme Court held last year that circumstantial evidence alone can be enough to prove a sale—on facts more tenuous than we have here. On the facts as we understand them, a sale occurred. Attached are the three most relevant cases. I’ll be happy to write a more formal memo if you like.

AFFIDAVITS

A written, sworn statement that recites facts based on the affiant's personal knowledge or opinion which serves as evidence.

1. Identify the affiant
2. Attest to the affiant's qualifications for making the statement
3. Record the affiant's statement of facts or opinion
4. A clear statement of the affidavit's purpose, such as to support a motion or to serve as evidence. *Place each statement in a separate, numbered paragraph.*

GOALS FOR GOOD LEGAL WRITING: AFFIDAVITS

Before writing, decide which facts are relevant.

Do not write an affidavit to make an argument or sway the reader.

TIP: Be careful with wording! Include only specific factual statements. If the wording acknowledges facts as true, rather than recites and swears to the truth of personally known facts, you are not writing an affidavit.

GOALS FOR GOOD LEGAL WRITING: AFFIDAVITS

Follow rules of evidence

- **Admissibility**: when used in place of in-court testimony, comply with the rules of evidence to be admissible.
- **Hearsay**: An affidavit that contains hearsay must lay a foundation for its admissibility.
- **Expert witnesses**: affidavit must include not just the expert's opinion but also the witness's qualifications and the basis for reaching the conclusions stated. It should state the witness's education, training, and experience.
- **Standard for expert testimony**: the affiant must comply with whatever standard the court uses to determine the reliability of the evidence, such as the general-acceptance test.
- **Writings, business records, photographs, things**. For a court to consider something other than human testimony as evidence, the affiant must establish personal knowledge of the thing's authenticity.

AVOID THE COMMON FAULTS OF AFFIDAVITS:

Avoid overly formal, jargon-filled language/legalism

- Use plain English and adjust the style and diction to reflect how an affiant speaks.
- “who, being duly sworn, deposes and says” adds nothing.
- Never write in the third person
 - An affidavit is a personal statement so use first-person pronouns.
- Do not ramble
 - Longwinded, rambling sentences are open to misinterpretation and tend to get off track.

AVOID THE COMMON FAULTS OF AFFIDAVITS:

NEVER tweak or improve facts

- The statements in an affidavit are facts, not arguments or conclusions. NEVER distort the facts (e.g., using emotion-charged words such as *malicious* and *heartless*), slant, or omit facts.

Label an evidentiary affidavit as an exhibit

- Sometimes a litigator will submit a document that refers to an affidavit as a specific exhibit, but the drafter of the affidavit has neglected to mark it so that it is clearly identifiable as the one referred to (e.g., “Exhibit A to Plaintiff’s Motion; Affidavit of John Brown”)

AVOID THE COMMON FAULTS OF AFFIDAVITS:

Affidavit to Prove Use of an Opposition Mark

ROBERT WOOD, being dully sworn stated:

1. My name is Robert Wood. I am over 21 yeas of age, of sound mind, and I have personal knowledge of the facts stated therein.
2. I am the Marketing Director for Unicorn Books. I started work at Emperor Penguin Books as a design artists in 1974 and helped design the company's logo.
3. The company's logo features a black silhouette of a unicorn with a golden horn and details of the mane and tail picked out in silver. A sample of the logo is attached.
4. Every book published by Unicorn has the unicorn mark on top of its spine and at the bottom of the title page. Samples of the logo's use are attached.
5. Books with the unicorn mark have been sold in the states of Colombia, Rapture, and Terminus continuously since 1974.
6. I personally suggested that the company use distinctive pink and blue covers for girls' and boys' books respectively. The company has used the unicorn logo on pink-covered and blue-covered books since 1974. sample of the logo and of the pink and blue covers are attached.
7. Unicorn sells about 500,000 books and has sales revenue of \$1 million dollars each year.



PLEADINGS

Pleadings should:

1. Protect your client's interests.
 - A. Filing pleadings can help preserve trial strategy, aid discovery, and stop the running of a statute of limitations.
2. Always assert the claims that are most important to the client in the initial pleading.
3. Keep its answers brief and precise to the plaintiff's claims to narrow the issues for trial to only those that are disputed.
4. Assert all available defenses in your answer.

GOALS FOR GOOD LEGAL WRITING: PLEADINGS

The goal is to draft a pleading that:

- 1) makes the court want to rule in your favor, and then
- 2) gives the court the authority upon which to base its decision.

Strategically analyze your case and decide how you would like it to be presented to the jury.

- What obstacles do you anticipate?
- What are the key issues in your case?
- Can you eliminate them, or frame them to your advantage?
- How & when do I present the issue?
 - Will the court be more likely to rule in your favor if you raise the issue in a written motion months before trial, or as an oral objection at trial when opposing counsel asks a question?

AVOID THE COMMON FAULTS OF PLEADINGS:

Follow the specific rules each jurisdiction has for the form and substance of pleadings

Do not overplead. What you plead, you must prove.

Include every piece of essential information:

- 1) a succinct statement of the grounds for the court's jurisdiction,
- 2) a succinct statement of the claim showing that the party is entitled to relief, and
- 3) a request for relief.

When drafting an answer you **MUST**:

- 1) respond to every fact set out in the complaint
- 2) assert an affirmative defense or raise a compulsory counterclaim in the answer

AVOID THE COMMON FAULTS OF PLEADINGS:

Draft pleadings in plain English, keep them concise, and tailor them to the facts of your case, the specific claim, the current state of the law, and the local rules.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
FAMILY LAW DIVISION

MARY JANE
Petitioner/Wife

CASE NO: 1234-567

vs.
BILLY BOB
Respondent/Husband.

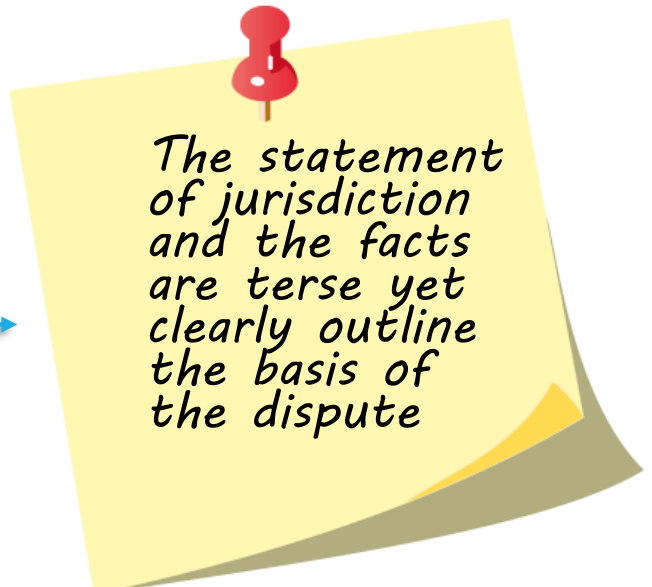
DIVISION: 1

_____ /

PETITION FOR DISSOLUTION OF MARRIAGE WITH MINOR CHILDREN

Petitioner, MARY JANE (hereinafter "Wife") by and through her undersigned counsel, files this Petition for Dissolution of Marriage with Minor Children And for Other Relief against the Respondent, BILLY BOB (hereinafter "Husband"), and in support thereof states the following:

1. This is an action for dissolution of marriage with minor children under Ch. 61 of the Florida Statutes.
2. The Wife has been a continuous resident of Hillsborough County, Florida for at least six (6) months preceding the filing of this Petition.



The statement of jurisdiction and the facts are terse yet clearly outline the basis of the dispute

MOTIONS

Motions are one the most important pieces of writing attorneys will produce. Persuasively written motions may:

1. Help educate the judge about the merits of your case— or the lack of merit in your opponent's case.
2. Inform the court about an issue and to advance your legal theory.
3. Preserve your client's procedural rights

GOALS FOR GOOD LEGAL WRITING: MOTIONS

Before drafting a motion:

1. Think about what advantage you seek.
2. Prepare a *proposed order*: it will focus your mind on the precise relief that you are requesting, and it will let the court know how to rule in your favor.
 - a) Don't write an order that simply "grants the motion"; rather, make the order specific (e.g., "the trial is continued until July 24, 2017" or "the expert designation of Garrett Hobart is struck").

GOALS FOR GOOD LEGAL WRITING: MOTIONS

As you draft a motion:

1. The opening of a motion should either tell the judge what the case is about or tell the judge why the motion should be granted or denied.

Example:

1. **NO:** Defendant X (hereafter “X”), in accordance with Federal Rule of Civil Procedure 12, hereby moves to dismiss Count IV of the complaint filed by Plaintiff Y (hereafter “Y”). In support hereof, X states as follows. . . .
2. **Yes:** Defendant’s motion for summary judgment on count IV should be granted because discovery has shown that there is absolutely no evidence that Defendant did. . . .

GOALS FOR GOOD LEGAL WRITING: MOTIONS

Learn the rules— Federal, state, and any local rules— that govern the courts you appear before.

Get to the point

- Summarize the issue, say how you think it should be resolved, and briefly explain why. Leave less important details for the main body. You should try to win a motion in the first page and a half.

DO NOT use fill-in-the-blank motions

- You will often have to redraft them to fit the particular fact of your case. It is easy to forget important information and produce a sloppy motion that reflects poorly on you.

Cite often

- You need legal authority by which the judge can legally order the specific relief you've asked for.

GOALS FOR GOOD LEGAL WRITING: MOTIONS

ALWAYS double-check facts and citation

- An erroneous citation or a misstatement of fact reflects poorly on the writer's competence and wastes the court's time.
- While you should describe the law and facts persuasively, always use precise, accurate language so that the court can trust your representations.

GOALS FOR GOOD LEGAL WRITING: MOTIONS

Westeros Knightly Insurance Company's Motion of Summary Judgment

In accordance with Rule 56 of the Ohio Rules of Civil Procedures, Westeros Knightly respectfully moves the Court for summary judgment on the claims contained in its complaint for declaratory judgement. Although Mr. Stark's insurance policy with Westeros Knightly excludes coverage for his intentional acts, all the allegations against Mr. Stark are for intentional acts. After 18 months of litigation, there are no genuine issues of any material fact relating to this point. Westeros Knightly is therefore entitled to judgment as a matter of law.

Respectfully submitted,

Renly Baratheon
Master of Laws
Small Council

King's Landing, Crownlands, Westeros

The following sample omits useless information at the beginning and encapsulates the main reasons that the court should grant a summary judgment

An attorney would now attach a supporting memorandum that goes into greater depth with a statement of the precise issue, followed by a more detailed argument based on the undisputed facts and the law

QUESTIONS?

