

Basics of Judicial Writing

I. Five Rules to Live (Write) by:

- A. In English, the usual and most communicative sentence order is SUBJECT/VERB/OBJECT.

EXAMPLE: Prances proudly the powerful steed.

- B. As a rule, use active voice.

EXAMPLE: The defendant was pursued by the police.
The police pursued the defendant.

Exception, e.g.: “Mistakes were made.”

- C. As a rule, simplify sentences.

An important corollary of this rule is to rein in the grammatical gremlin known as the prepositional phrase. Often, sentences may be simplified by changing the prepositional phrase to a one-word adjective. (example 1.)

- D. Avoid expletive constructions.

EXAMPLE: There is a law that forbids cruelty to animals.
It is a sure thing that he will appeal.

- E. Avoid nominalizations.

EXAMPLE: The lawyer made a motion to continue the case.
Counsel presented an argument for leniency.

(Review additional examples 1 - 6.)

II. Most Common Errors Seen in Legal (if not all) Writing:

- A. Comma usage.

1. Before coordinating conjunctions when they link independent clauses.

(examples 7, 9 - 13, 31)

2. Following adverbial clauses and most other introductory phrases.

(example 8)

3. Separating items in a series, including coordinate conjunctions. Commas separate parallel items such as those in a series. Comma is

preferred

before the penultimate item but may be omitted when there is no danger of misreading.

4. Setting off nonrestrictive and other parenthetical elements.

(examples 14, 15)

B. Syntax.

1. “Since” “while” (examples 18, 19)

2. “Where” (example 21)

3. “As” (example 33)

4. Verbs (examples 23, 24)

5. Modern slang (Dictionary usage: descriptivism v. prescriptivism)

EXAMPLE: The canine alerted on the driver’s side door.

EXAMPLE: The victim presented with abdominal stab wounds.

C. Subject-verb agreement.

(examples 28, 29)

D. Quotation mechanics.

(example 30)

E. Pronoun usage.

Use pronoun case according to the “internal sentence.” (example 25)

III. Tips on Proofreading

- A. First tip on proofreading: Do it!
- B. Proofread separately for mechanical accuracy and substantive accuracy.
- C. Tactics.
 - 1. Allow document to “cool off” before proofreading.
 - 2. Read document to second person who follows text.
 - 3. Some effective proofreaders learn to read the document backwards (!).
 - 4. Warning: Watch *connectors*, e.g., articles and prepositions!

Appendix

1. The order of the court in the post-conviction case that is now challenged by the petitioner, on appeal, entered November 17, 2002, proceeds to dismiss the petition in summary fashion.

(The petitioner challenges the court’s November 17, 2002 summary order dismissing the post-conviction petition.)

- 2. It is an axiom that irrelevant evidence is inadmissible.
- 3. She rode a horse in blue pajamas.
- 4. The court gave its opinion that the claim was barred.

5. It is a rule that propensity evidence is not admissible.
6. It is sometimes challenging when equal protection issues arise.
7. The petition accused counsel of ineffective assistance and it claims the plea is involuntary.
8. Because the Vols lost to Vanderbilt, they failed to post a winning season.
9. Fly-fishing is a sport, and an art form.
10. The blue truck ran the light, and collided with the red car.
11. The driver braked but he couldn't stop in time.
12. The woman in the red car was screaming so we stopped to help her.
13. The photographs of the body are relevant to the cause of death and they are admissible.
14. My sister who forgot my birthday is quite selfish.
15. Any sister who forgets birthdays is quite selfish.
16. She's the one who's father is a senator.

17. Bill and Ted were sorry. Each of them cried.
18. Since we were in town, we bought the food.
19. While the lawyer argued estoppel, the judge thought of the dirty hands doctrine.
20. The man looked angrily.
21. Where a defendant claims insufficiency of the evidence, the court reviews the evidence in the light most favorable to the state.
22. When he did not pay his court costs, the state filed a warrant to revoke the defendant's probation.
23. The court argued that it had no jurisdiction.
24. The trial court felt sympathy for the plaintiff.
25. She offered help to whomever needed it.
26. I appreciated him helping Daniel.
27. The man sitting at the desk annoyed us.

28. Neither the basket nor the apples were expensive.

29. The jury is deliberating.

30. Judge: The defendant is not credible.

The judge said that “[t]he defendant is not credible.”

The judge said that the “defendant is not credible.”

The judge said, “The defendant is not credible.”

“The defendant,” the judge said, “is not credible.”

31. The victim testified that she called for help, and her neighbor came within five minutes.

32. He was a man that suffered no fools.

33. The victim admitted the defendant, who wore a badge, was courteous.

34. Before the shots were fired, the defendant testified that he left the scene.

35. The defendant did not testify, as the victim testified she could not identify her attacker.

34. The officer saw a pistol laying in the floorboard.

35. The officer said that a pistol lay in the floorboard.

36. The witness said that the defendant is taller than him.
37. The State cited the statute of limitations, and they moved to dismiss the petition.
38. The substance weighed .6 grams.
39. The officers discovered a meth lab in the basement.
40. The TBI found that the DNA on the GPS unit and iPad matched the defendant.

JUDICIAL WRITING



Presented by:

Judge James Curwood Witt, Jr.
Tennessee Court of Criminal Appeals

Tennessee Judicial Academy
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The Roadmap Method of Writing a Paper

A major benefit to using a roadmap to guide you to a certain location is that, at any point in the journey, one may determine his or her location in relation to the point of origin, the point of destination, or if need be, to the surrounding geography. Similarly, roadmapping a paper advances comprehension by enabling the reader to track progress from beginning to end. The aim is to orient the reader between any given point and the over-arching matrix of the problem.

1. Begin with an introduction and an overview.

An introduction to your document is usually helpful. The introduction itself – or a following paragraph – should sketch an overview of the document. List the topics to be covered, and, unless you are writing the great American mystery novel, express the result.

In a brief, an overview of the argument of each issue should be provided at the beginning of the treatment of that issue.

2. Consider the use of headings or sections.

A brief, of course, will be compartmentalized into the various issues. If comprehension of a given issue would be facilitated by the use of titled sections and subsections in outline form, then arrange a logical ordering of the parts.

E.g.:

- I. Issue
 - A. Standard of review
 - B. Applicable law
 - 1. General rule
 - a. Constitutional provisions
 - b. Statutory provisions
 - c. Caselaw
 - 2. Exceptions
 - C. Application of the law to the present facts
 - D. Conclusion

3. When helpful, begin each paragraph with a thematic statement for the paragraph.

Each paragraph is a “unit” of communication. In keeping with the roadmap philosophy, it should have a theme, and often if not usually the theme should be expressed in the beginning. Sometimes, the paragraph unit can be effectively “packaged” by a wrap-around statement of the theme.

E.g.:

The circumstances of the case support the jury's finding of premeditation. The defendant used a weapon on an armed victim. Earlier on the day of the homicide, the defendant told his brother that the defendant "wish[ed] someone would shoot the victim." Armed with a pistol, the defendant waited for more than an hour for the victim to arrive, and after the shooting, the defendant evinced a calm demeanor. Based upon this evidence, a rational jury could have found the existence of premeditation as an element to first degree murder.

4. Make certain that paragraphs are logically or sequentially ordered.

In keeping with your stated "route" through the subject matter, take care to place your paragraphs in the correct order. Logic and common sense are the guides here.

5. Use signals and connectors to establish the proper linkage between paragraphs.

The key to roadmapping for the reader is to express the relationship of the paragraph's theme to the preceding paragraph or paragraphs, a task usually accomplished by the use of directory signals such as "By way of example," "Specifically," "At this point in the trial," "Unlike the confession in *Smith*," "In contradiction of the State's claim," or "The facts, however, suggest otherwise."

6. Use signals and connectors to establish the proper linkage between sentences.

Within a paragraph, sentences should facilitate the thematic flow of thought through the use of signals and connectors. In this way, the writer guides the reader through contours such as affirmation, comparison, contrast, explication, exemplification, contradiction, challenge, or inoculation.

7. Use proper syntax to assure that words convey precise meaning.

Just as sentences are the subset units of communication within paragraphs, words are obviously the subset units of communication within sentences. The proper use of grammar enhances precision and meaning, and the choice of the proper word is often critical to economically communicating to the reader.

8. Use a "bifurcated" method of proofreading

The first rule of proofreading is "do it." The second rule is "do not do it too soon." Let the document "cool off" before you proofread. Third, proofread once for mechanics and a second time for substantive content. Pay particular attention to small connectors such as articles and prepositions because one tends not to "read" these words.

Some usage advice:

admit to	delete “to”
aggravate	People can never be aggravated, only circumstances.
altercation	a heated exchange of words; no injury results
anxious	connotes worry or fear, not merely eagerness or anticipation
climb up	delete “up”
close proximity	delete “close”
collision	occurs only between <u>two moving</u> objects
comprised of	wrong; to comprise means to contain; use “composed of”, e.g., the “rule is composed of three parts”
contagious	refers to a disease spread by contact; diseases spread by air or water are “infectious”
continual	refers to things that happen repeatedly but not constantly; “continuous” indicates an uninterrupted sequence
former/latter	“Former” refers only to the first of two things; “latter” refers to the second of <u>two</u> things.
loath/loathe	“Loath” is an adjective meaning reluctant; “loathe” is a verb meaning to despise.
practical	refers to a thing that can be done and is worth doing. A thing that can be done but may or may not be worth doing is practicable.
purposely/purposefully	“purposely” refers to acting intentionally; “purposefully” refers to acting intentionally with an objective in mind
Pyrrhic victory	does not refer to a victory that is hollow; rather, it refers to a victory that is very costly
regretful/regrettable	“Regretful” refers to a feeling of regret; “regrettable” means unfortunate.

repel/repulse	To “repulse” is to turn back; to “repel” is to cause squeamishness or distaste.
respite	refers to temporary relief. Thus, avoid writing “temporary respite” or “brief respite.”
responsible	People may be responsible for results, but things are not.
shall/will	To express simple futurity, use “shall” in the first person and “will” in the second and third person. To express volition, do the reverse.
straitlaced	not “straightlaced”
substitute	should be followed by “for,” not “by” or “with”
together with	“The man, together with his son, has plowed the field.” “With” in the sentence is a preposition and does not act as a conjunction to make the subject plural.
toward/towards	“Toward” is preferred in America, “towards” in Britain.

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