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Do's, Don'ts & Maybes: Legal Writing Punctuation—Part II

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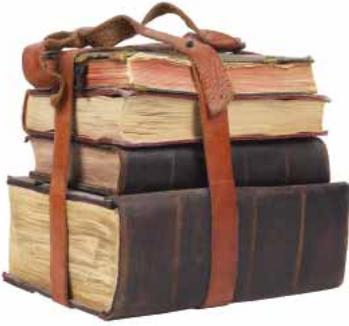
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Do's, Don'ts, and Maybes: Legal Writing Punctuation — Part II

In the last column, the Legal Writer discussed seven punctuation issues in legal writing. We continue with two more.

8. Commas. Commas are meant to slow down language or replace words. To create a pause, add a comma.

Put commas after salutations in informal writing. *Example:* “Dear Grandma Jane.” Use colons in formal writing. *Example:* “Dear Mr. Johnson:” In formal and informal writing, use commas after closing. *Examples:* “Sincerely,” “Very truly yours,”

Put commas before titles. *Examples:* “Jane Smith, Esq.” “Bob Jones, Ph.D.” “Tom Roe, M.D.” In a sentence, put commas after titles. *Example:* “Sam Smith, Ph.D., conducted the psychiatric evaluation.” Insert commas before “Jr.” or “Sr.” only if the person uses a comma. If the person uses a comma, use commas before and after. *Examples:* “Judge John Smith, Jr., is presiding.” “Judge John Smith, Sr., is presiding.”

Don't use commas to separate nouns from restrictive terms of identification. *Example:* “Alexander the Great.”

Use commas to set off dates. *Example:* “The deposition is scheduled for Wednesday, October 31, 2007.” Don't put a comma between a month and the year. *Correct:* “July 2008 will be her sixth anniversary since she passed the bar exam.”

A controversy exists about whether to put a comma after the date if the date appears within a sentence. The comma is optional, but the Legal Writer recommends it. *Example:* “On August 29, 2007, she started law school.”

Use commas to separate parts of an address and after the address. *Correct:*

“The attorney has worked at 123 Justice Avenue, Elmhurst, New York 11373, since 2001.” Don't use commas between the state and the zip code. In typing, add two spaces after the state and before a zip code. *Example:* “New York, New York, 10013.”

Use commas to separate digits. The Bluebook tells writers to insert commas only in figures containing five or more digits.¹ The Association of Legal Writing Directors (ALWD) Citation Manual instructs writers to insert commas in numbers containing four or more digits.² The New York State Official Style Manual (Tanbook) doesn't discuss the issue. The Bluebook: “4500.” Insert a comma only when the number exceeds four digits: “45,000.” ALWD: “4,500.”

Use commas to contrast or emphasize words. *Example:* “Jane deposed three, not five, witnesses.” “William met his client in Ithaca, not Schenectady.”

Set off interruptive phrases or transitional expressions with commas. The most common interruptive phrases or transitional expressions are the conjunctive adverbs “additionally,” “for example,” “however,” “moreover,” “therefore,” and “thus.” *Examples:* “The attorney, however, spent too much time asking the witness irrelevant questions.” “The attorney, for example, asked the witness what she ate for breakfast.” “The plaintiff, therefore, failed to prove negligence.”

A controversy exists about introductory commas. Use introductory commas to clarify an introductory word, clause, or prepositional or participial phrase or subordinate clause, to avoid ambiguity or miscues, and

after a lengthy introductory clause. A clause has a subject and a verb. A phrase has a subject or a verb, but not both. *Introductory word examples:* “Honestly, I remember nothing about the accident.” Writers often omit introductory commas. *Incorrect:* “Thanks Bob.” *Correct:* “Thanks, Bob.” *Correct:* “Therefore, the plaintiff failed to prove negligence.” *Also correct (without the comma):* “Therefore the plaintiff failed to prove negligence.” *Introductory phrase example:* “In Quebec City and Montreal, students read and write in French.” *Introductory clause:* “Although Jane wrote the appellate brief, Mary argued it on appeal.” *Ambiguity or miscue:* “After the house blew up Mary sued.” Without the comma, the house is a homicide bomber that blew Mary up. *Correct:* “After the house blew up, Mary sued.”

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Use commas to set off introductory phrases that add nonessential information to a preceding clause. Introductory phrases will begin with words like these: “although,” “according to,” “after,” “despite,” “first,” “if,” “including,” “irrespective of,” “particularly,” “perhaps,” “preferably,” “probably,”

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“provided that,” “regardless of,” and “usually.” *Examples:* “Although she was sick, Ms. Jones finished the trial.” “If the defendant appears this morning, we’ll continue the trial.”

Use commas to set off tag questions. *Examples:* “She finished cross-examining the witness, didn’t she?” “She’s an eloquent attorney, don’t you think?”

Use commas to separate coordinate adjectives. *Examples:* “He’s a meticulous, efficient attorney.” “After winning the trial, Joe bought a new, trendy convertible.” Because noncoordinate adjectives carry equal weight, don’t use commas to separate them.

Two tips to figure out whether the adjective is coordinate or noncoordinate: (1) Reverse the order of the adjectives to see whether the sentence makes sense. Or (2) insert “and” between the adjectives to see whether the sentence makes sense. If the adjectives pass test 1, they’re coordinate adjectives and need commas. If the adjectives pass test 2, they’re coordinate adjectives and need commas. If the adjectives pass neither test, the adjectives are noncoordinate and won’t need commas.

Using the examples above for tests 1 and 2: “He’s an efficient, meticulous attorney.” (Sentence makes sense when you reverse the adjectives.) “He’s a meticulous and efficient attorney.” (Sentence makes sense when you insert “and.”) “After winning the trial, Joe bought a trendy, new convertible.” (Sentence makes sense when you reverse the adjectives.) “After winning the trial, Joe bought a trendy and new convertible.” (Sentence makes sense when you insert “and.”)

Consider this: “The firm bought three new affordable computers.” Using test 1 to reverse the adjectives: “The firm bought new three affordable computers.” “The firm bought affordable three new computers.” “The firm bought affordable new three computers.” “The firm bought new affordable three computers.” The sentences make no sense regardless which test you use. The adjectives are noncoordinate; they

don’t need commas. Using test 2 to insert “and”: “The firm bought three and new and affordable computers.” (No sense.)

Use a comma to separate two parts of a double-comparative. *Correct:* “The sooner, the better.” “The more, the merrier.”

Put a comma before a coordinating conjunction (“and,” “but,” “for,” “nor,” “or,” “so,” “yet”) that joins two independent clauses. Don’t put a comma before a conjunction if the conjunction joins a dependent clause: a sentence that has no subject, verb, or both can’t stand on its own as a sentence. *Examples of conjunction joining two independent clauses:* “She lost her first trial, but she won every trial since then.” “The court attorney studied in the law library, and while there he drafted an opinion.” *Examples of conjunction joining a dependent clause:* “She won her first trial but never won again.” “The court attorney studied in the law library and drafted an opinion there.” If the two independent clauses are short, don’t insert a comma except to emphasize the second clause. *Example:* “Lawyers speak and judges listen.” *Or:* “Lawyers speak, and judges listen.”

Use commas to enclose appositives: nouns or pronouns that rename or explain the nouns or pronouns that follow. *Examples:* “Lawyer A, who practices in state court, and Lawyer Z appeared in federal court.” (Note the absence of a comma after “Lawyer Z.”) “Harry argued before the Supreme Court, Appellate Division, Third Department.” “Anne, the celebrated trial attorney, answered questions from the press.” “The defendant, according to witnesses, shot the victim three times in the chest.”

If a conjunctive adverb (“accordingly,” “again,” “also,” “besides,” “consequently,” “finally,” “for example”) joins two independent clauses, use semicolons or periods, not commas, to set off the clauses. *Incorrect:* “The court denied petitioner’s summary-judgment motion, consequently, the court set the matter for trial next week.” *Correct:* “The court denied peti-

“Where’s the beef jerky?” Don’t use a comma unless you mean “Where’s the beef, jerky?”

tioner’s summary-judgment motion; consequently, the court set the matter for trial next week.” *Or:* “The court denied petitioner’s summary-judgment motion. Consequently, the court set the matter for trial next week.” Using a comma instead of a semicolon or a period will create a comma-splice run-on sentence.

Separate a series of three or more words or phrases by putting a comma between them. The last comma in the series — the serial comma — is optional but preferred. (More on serial commas will appear in the Legal Writer’s forthcoming column on legal-writing controversies.) *“And” example:* “To prepare for trial, Mike drafted the opening, Mary drafted the closing, and I prepared the exhibits.” *“Or” example:* “After he leaves the courthouse, John eats at Forlini’s Restaurant, Bagel Place, or Peking Duck House.” *Exceptions:* Don’t add commas if you join all the words, phrases, or statements with “and.” *Example:* “To prepare for trial, Mike drafted the opening and Mary drafted the closing and I prepared the exhibits.”

Don’t use a comma before an ampersand in a firm or organization’s name unless the firm or organization’s name uses a comma. *Examples:* “Mr. White works for Johnson, Brown & Roe LLP.” “Howard, Doe & Jones, P.C., represents the plaintiff in the lawsuit.”

Never put commas after exclamation points or question marks following a quotation. *Incorrect:* “I declare a mistrial!,” the judge said. *Correct:* “I declare a mistrial!” the judge said. *Incorrect:* “Are you finished with this witness?,” the judge asked. *Correct:* “Are you finished with this witness?” the judge asked.

Don’t use a comma after a “that” before quotation marks when the “that” precedes a quotation. *Incorrect:*

The judge found that, “the witness is incredible.” *Correct:* The judge found that “the witness is incredible.” *Or (without a “that”):* The judge found “the witness . . . incredible.”

Don’t use a comma when other material precedes and follows the quotation. *Correct:* “The judge’s repetitions of “Stop arguing like children” didn’t pacify the attorneys.

Use a comma to introduce a quotation only (1) when the quotation is an independent clause and (2) when what precedes the quotation is inapposite to the quotation or to replace a “that” or a “whether” before the quotation. If you wouldn’t add a comma if the sentence had no quotation marks, don’t add a comma before the quotation marks just because there are quotation marks.

Example when the quotation is an independent clause: The witness stated, “I was walking down Centre Street when I noticed the defendant.” *Example of what precedes the quotation is inapposite to the quotation:* “The attorney worked as an associate at Roe & Doe, “and for three years he never tried a case.” *Examples of a comma replacing “that”:* Judge Doe ruled, “The case must be dismissed on jurisdictional grounds.” “As Judge Doe explained, “The case must be dismissed on jurisdictional grounds.” *Example of a comma replacing “whether”:* The issue is, “City Court had the authority to order petitioner to write a reference letter for respondent.”

Use commas to set off parenthetical expressions, or unimportant comments or information. *Example:* “His argument is, in my opinion, frivolous and weak.”

Put commas after parentheticals, not before them. *Incorrect:* “The attorney attended New York University School of Law, (NYU) graduating summa cum laude in 2001.” *Correct:* “The attorney attended New York University School of Law (NYU), graduating summa cum laude in 2001.”

Use commas to set off nonrestrictive phrases. A phrase is nonrestrictive when it isn’t essential to the meaning of a sentence. Nonrestrictive phrases are nondefining: They don’t identify which things or people the clause

refers to. “Which” often precedes nonrestrictive phrases. If you remove a nonrestrictive phrase from a sentence, the sentence will retain its meaning. Restrictive phrases don’t need commas. A phrase is restrictive when it’s essential to the meaning of the sentence. Restrictive phrases are defining: They identify which things or people the clause refers to. “That” often precedes restrictive phrases. *Example of a nonrestrictive phrase:* “The car, which was light blue, slammed into the pedestrian.” That example presupposes that one car among others on the road hit the pedestrian. *Example of a restrictive phrase:* “The courtroom that seats 250 occupants had a back room for special events.” That example presupposes the existence of more than one courtroom.

Use a comma to omit an elliptical word, a word a reader can replace immediately. *Example:* “He picked juror number 4; she, juror number 6.” The comma replaces “picked.”

Never use a comma before a verb. *Incorrect:* “Knowing when to use commas, creates problems for lawyers.” Eliminate that comma.

Don’t use a comma before “because” unless the sentence is long or complex. *Example of an unnecessary comma:* “The associate was late, because she had a flat tire.” *Example of a necessary comma:* “I knew that James would be promoted to partner that morning, because Fred’s sister worked in the same firm and she called me with the news.” The comma is necessary here because the reader might believe that James was promoted because Fred’s sister worked in the same firm.

Never use a comma after a compound subject. *Incorrect:* “Court attorneys use Westlaw, Lexis, and Loislaw, nearly every day.” *Correct:* “Court attorneys use Westlaw, Lexis, and Loislaw nearly every day.”

Use commas to eliminate confusion. *Example:* “You’re a better attorney than I, Mary Beth.” Include the comma unless you mean “I Mary Beth.” *Example:* “Where’s the beef jerky?” Don’t use a comma unless you mean “Where’s the beef, jerky?” *Incorrect:*

“How’s your wife Samantha?” Leaving out the comma in this example would be correct if the person has more than one wife. *Correct:* “How’s your wife, Samantha?” (But even that example can be a miscue. Is the reader discussing Samantha, or is Samantha the person’s wife?)

In Bluebook and ALWD format, put commas after citations when citing in text:³ “The court in *X v. Y*, 99 F.4th 99 (14th Cir. 2002), held that” This issue doesn’t arise under the Tanbook, which requires that parentheses enclose a citation in the text and forbids commas to surround the parentheses: “The court in *X v Y* (99 F4th 99 [14th Cir 2002]) held that”⁴

According to ALWD, the Bluebook, and the Tanbook, don’t put commas after signals.⁵ *Incorrect:* *Accord,* *But see,* *Compare,* *Id.,* *See,* *See also,* In Bluebook format, use a comma before and after “e.g.” when you use it with other signals.⁶ *Example:* “*See, e.g.,*” “*But see, e.g.,*”

Put commas inside quotation marks. *Example:* “I have no further questions for this witness,” the attorney said.

9. Hyphens. Hyphens divide single words into parts or join separate words into single words.

Use hyphens (“-”) to divide words between syllables from one line to the next. Put the hyphen after the last letter on the first line, not at the beginning of the second line. Don’t put any spaces before or after the hyphen.

Never use a hyphen to divide a one-syllable word.

Hyphenate names if the individual uses that style. *Example:* “Ms. Smith-Green.”

Words evolve. Long ago, we said “tele phone,” not-so-long-ago we said “tele-phone,” and now we say “telephone.” With frequent use, compound words join to become single words. *Examples:* “backpack,” “bumblebee,” “copyright,” “deadlock,” “headlight,” “weekend.” Other compound words haven’t become single words; they’ve kept their hyphens. *Examples:* “simple-minded,” “well-being.” Some

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are spelled as separate words: “lame duck,” “mountain range.” Always check a dictionary to see whether a word takes a hyphen or whether it’s become a single word.

Some writers oppose combining words with hyphens to form compound adjectives. The Legal Writer recommends hyphenating to avoid confusion and miscues. *Example*: “He’s a small claims arbitrator.” If you don’t hyphenate, readers might believe that he’s a claims arbitrator who’s short. *Correct*: “He’s a small-claims arbitrator.” *Or*: “He’s a Small Claims arbitrator.”

Some tips: Hyphenate a compound adjective appearing before a noun. *Examples*: “The attorney had a chocolate-colored briefcase.” “He’s a criminal-defense practitioner.” Don’t hyphenate when the compound adjective appears after the noun. *Examples*: “The attorney’s briefcase was chocolate colored.” “He practices criminal defense.” Don’t use a hyphen to join an adverb ending in “ly” to another word. The modifier “ly” already trips off the tongue. *Incorrect*: “The jury found him guilty of criminally-negligent homicide.” *Correct*: “The jury found him guilty of criminally negligent homicide.”

Hyphenate uppercased nonproper-noun adjectival phrases. *Example*: “Legal-Writing Seminar.” Don’t hyphenate capitalized proper-noun adjectival phrases. *Incorrect*: “Off-Centre-Street Jam, Inc.” *Correct*: “Off Centre Street Jam, Inc.”

Don’t insert a hyphen in a compound predicate adjective whose second element is a past or present participle. *Incorrect*: “The effects were far-reaching.” *Correct*: “The effects were far reaching.” *But*: “The judge’s opinion had far-reaching effects.”

Don’t hyphenate foreign words used in an adjectival phrase. *Incorrect*: “Mens-rea element.” *Correct*: “Mens rea element.”

Some writers recommend against hyphenating a two-word modifier if the first word is a comparative (“first,” “greater,” “higher,” “lower,” “upper”)

or a superlative (“best,” “better,” “more”). The Legal Writer recommends hyphenating. *Example*: “The law textbooks were the highest priced books.” *Becomes*: “The law textbooks were the highest-priced books.” *Example*: “New York State judges are no longer in the upper income bracket.” *Becomes*: “New York State judges are no longer in the upper-income bracket.” *Example*: “He was the best qualified candidate for Surrogate’s Court.” *Becomes*: “He was the best-qualified candidate for Surrogate’s Court.”

Hyphenate compound numbers from twenty-one to ninety-nine under the Bluebook.⁷ Under the Tanbook, use figures for the figure 10 and higher.⁸

Use hyphens to write fractions: “one-fourth.”

Hyphenate after “well” when you use “well” in an adjectival phrase. *Examples*: “He’s a well-known attorney.” “The firm’s summer interns are a well-matched team.” Otherwise, hyphenate after “well” if the phrase doesn’t mean the same thing if it’s flipped around. *Example*: “Judge Roe is well-read.” Hyphenate because Judge Roe can’t be read well, unless he has lots of tattoos.

Hyphenate suspension adjectival phrases. *Examples*: “First-, second-, and third-year associates will attend the holiday party.”

Some writers don’t hyphenate titles denoting a single office. *Examples*: “Attorney at law,” “editor in chief,” “vice president.” The Legal Writer, like the Tanbook,⁹ recommends that you hyphenate. *Becomes*: “Attorney-at-law,” “editor-in-chief,” “vice-president.”

Hyphenate a title that precedes “elect.” *Examples*: “Treasurer-elect,” “President-elect.”

Hyphenate to join words thought of as one expression. *Example*: “Secretary-treasurer.”

Hyphenate prefixes, or letters added to the beginning of a word, when omitting the hyphen will confuse the reader. *Examples*: “pre-judicial” versus “prejudicial,” “re-sign” versus “resign,” “re-count” versus “recount,” “re-cover” versus “recover,” “re-sent” versus “resent.”

Hyphenate when not hyphenating is visually troubling, such as when the prefix ends with the same letter that begins the word. *Example*: “anti-injunction,” “anti-intellectual,” “de-emphasize.” *Exceptions*: “coordinate,” “cooperate,” “unnatural.”

Hyphenate when the base is a proper noun. *Examples*: “anti-Nixon,” “pro-Washington.”

Hyphenate when using the words “all,” “ex,” “quasi,” or “self.” *Example of “all”*: “all-inclusive.” *Example of “ex”*: “an ex-court attorney.” But consider “ex-patriot” versus “expatriot.” *Example of “quasi”*: “quasi-contractual,” “quasi-complete.” *Examples of “self”*: “self-control,” “self-defense,” “self-employed.” Don’t hyphenate when adding “self” to a suffix, or letters added to the end of a word: “selfless.”

On your computer keyboard, the “hyphen” key is next to the “symbol” keys, usually after the “zero” key. Don’t press the “Shift” key; if you do, you’ll insert an underscore “_” instead of a hyphen “-”.

The Legal Writer continues with punctuation in the next column. ■

1. The Bluebook: A Uniform System of Citation R. 6.2(a)(vii), at 73 (Columbia Law Review Ass’n et al. eds., 18th ed. 2005).

2. Association of Legal Directors (ALWD) Citation Manual R. 4.2(h)(1), at 31 (3d ed. 2006).

3. Bluebook R. 10.2, at 81; ALWD R. 43.1(c) (3), at 318.

4. New York Law Reports Style Manual (Tanbook) R. 1.2(b), at 2 (2007), available at http://www.nycourts.gov/reporter/New_Styman.htm (html version) and <http://www.nycourts.gov/reporter/NYStyleMan2007.pdf> (pdf version) (last visited Dec. 11, 2007).

5. ALWD R. 44.6(a), at 325; Bluebook R. 1.2, at 46-47; Tanbook R. 1.4(a), at 6.

6. Bluebook R. 1.2 (a), at 46.

7. Bluebook R. 6.2(a), at 73 (“[S]pell out the numbers zero to ninety-nine in the text and in footnotes . . .”).

8. Tanbook R. 10.2 (a)(1), at 72 (2007).

9. *Id.* app. 5, at 127.

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