

## University of Ottawa Faculty of Law (Civil Law Section)

---

From the Selected Works of Hon. Gerald Lebovits

---

January, 2009

# Writing Carefully, Misused Modifiers Must Be Avoided

Gerald Lebovits



Available at: [https://works.bepress.com/gerald\\_lebovits/142/](https://works.bepress.com/gerald_lebovits/142/)

JANUARY 2009  
VOL. 81 | NO. 1

NEW YORK STATE BAR ASSOCIATION

# Journal



## Are Cigarettes Defective in Design?

*California and New York  
Diverge in Approach and Result*

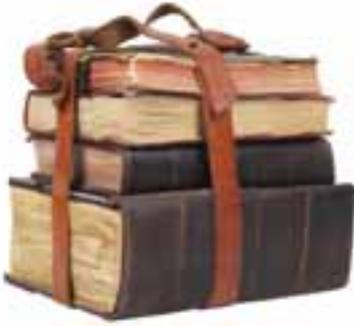
*by Robert G. Knaier*

### *Also in this Issue*

The Eyewitness Conundrum

The Past as Present:  
The Last "Dead Heat"  
in the State Senate, 100  
Years Ago

The Medicare Secondary  
Payer Statute



## Writing Carefully, Misused Modifiers Must Be Avoided

**M**odifiers are adjectives and adverbs that limit or qualify the sense of other words in a sentence. A well-placed modifier qualifies the meaning of a phrase and gives the reader information. Correctly placed modifiers provide clarity and emphasis. Misplaced, squinting, or dangling modifiers lead to baffling, knotted prose that confuses and inadvertently amuses. Good legal writers must follow the rules of proper modification to avoid ambiguity and mistaken hilarity.

### Misplaced Modifiers

You can lose your mind or even your head, but don't misplace your modifiers.

Like hormonal high schoolers, modifiers fall for whatever is closest to them. A misplaced modifier is a word, phrase, or clause placed too far from the word or idea it modifies. To prevent your modifiers from becoming involved with the wrong sort, always place them immediately next to the word being modified.

*Incorrect:* From Groucho Marx: "One morning I shot an elephant in my pajamas. How he got in my pajamas, I don't know."<sup>1</sup> Groucho misplaced the modifying phrase "in my pajamas" to get a laugh. The sentence would have lost its comedic value if he had correctly placed the modifier next to the phrase "one morning," the idea he modified. "I shot an elephant one morning while I was wearing my pajamas" would have been an appropriate, though unfunny, solution. Another unfunny but correct solution is to insert a comma to separate "one morning" from the rest of

the sentence. *Correct:* "One morning, I shot an elephant while I was wearing my pajamas."

*Incorrect:* From the movie *Mary Poppins*: Bert: "Speaking of names, I know a man with a wooden leg named Smith." Uncle Albert: "What's the name of his other leg?"<sup>2</sup> The phrase "named Smith" is the modifier in this sentence; "named Smith" modifies "a wooden leg," giving the impression that one of the man's legs is named "Smith." Reordering the sentence so that "I once met a man" and "named Smith" are side by side will correct this misplaced modifier. *Correct:* "I once met a man named Smith who had a wooden leg."

*Incorrect:* "I threw the plaintiff across the courtroom a law book." The misplaced modifying phrase "across the courtroom" means that someone threw the plaintiff across the courtroom. The writer can clarify the sentence by reordering it or by inserting a preposition so that "across the courtroom" isn't modifying "I threw the law book." Using the preposition "to" will explain what's being thrown. *Correct:* "I threw a law book across the courtroom to the plaintiff."

The word "with" is a commonly misplaced modifier, indicating mistaken ownership in a sentence. *Incorrect:* "I went to a lawyer with legal problems." "With legal problems" modifies "a lawyer" because the modifying phrase is placed next to the wrong phrase. The misplaced modifier suggests that the lawyer has legal problems. To fix this sentence, place the modifying phrase "with legal problems" next to the phrase "I went," which is the

action being modified. Notice how this sentence already has the preposition "to." Once you place the modifier next to the action or subject being modified, "to" helps the reader determine who in the sentence had the issues. *Correct:* "I went to a lawyer because I had legal problems." The trick is not to use "with" at the end a sentence. For instance, "I robbed a bank with money" suggests that I wasn't able to find a gun with which to rob the bank.

*Incorrect:* "The lawyer spoke to the judge with gusto." The modifier "with gusto" refers to the judge in this sentence instead of to the lawyer. Move the modifier so it correctly modifies the intended subject. *Correct:* "The lawyer, with gusto, spoke to the judge." Or: "With gusto, the lawyer spoke to the judge."

### Squinting Modifiers

A squinting modifier is a word that floats mid-sentence, modifying two words or phrases at the same time. Modifiers confuse when they squint at both preceding and succeeding words or phrases. These one-word modifiers include "almost," "also," "even," "exactly," "hardly," "merely," "nearly," "scarcely," "simply," and "solely." Eliminate squinting modifiers by repositioning the modifier, rewriting the sentence, or inserting a comma.

In particular, watch out for one-word modifiers like "only" and "just." Where would you put "only" in this sentence: "The prosecutor wanted to adjourn the case?" "[Only] the [only] prosecutor [only] wanted [only] to

CONTINUED ON PAGE 58

adjourn [only] the [only] case [only].” Where you place the word “only” alters the sentence’s meaning. *Correct*: “Only the prosecutor wanted to adjourn the case,” meaning that the prosecutor, no one else, was interested in adjourning the case. *Or*: “The only prosecutor wanted to adjourn the case.” This sentence indicates that there’s only one prosecutor. *Or*: “The prosecutor only wanted to adjourn the case.” The

Like hormonal high schoolers, modifiers fall for whatever is closest to them.

“only” placed here means that the prosecutor wanted to do nothing but adjourn the case. *Or*: “The prosecutor wanted only to adjourn the case.” *Or*: “The prosecutor wanted to adjourn only the case.” *Or*: “The prosecutor wanted to adjourn the only case.” These sentences all indicate that the prosecutor desired to adjourn this one case and no other. *Or*: “The prosecutor wanted to adjourn the case only.” The “only” in this position signals that the prosecutor wanted nothing to happen to the case except to adjourn. Writers must position modifiers carefully to state their intended meaning exactly.

It’s confusing when a phrase modifies two subjects simultaneously. *Incorrect*: “Even if the lawyer’s summation persuaded the jury, viewing it as a whole, the summation was filled with objectionable arguments.” It is unclear in this sentence whether the modifier “viewing it as a whole” modifies the lawyer’s summation or the objectionable arguments. Sometimes inserting or adjusting a comma will fix the problem. If not, rearrange the sentence or break it into two. *Correct*: “Even if the lawyer’s summation persuaded the jury, viewing it as a whole the summation was filled with objectionable arguments.” *Or*: “Even if the lawyer’s

summation persuaded the jury viewing it as a whole, the summation was filled with objectionable arguments.”

*Incorrect*: “The lawyer to whom the brief was delivered immediately saw the errors.” Was the brief “delivered immediately” to the lawyer *or* did the lawyer “immediately see the errors?” “Immediately” simultaneously modifies the verbs “delivered” and “see.” The meaning depends on which of the two verbs is modified. Rewriting the sentence so that the modifier no longer modifies both words clears up this ambiguity. *Correct*: “The brief was delivered immediately to the lawyer, who saw the errors.” *Or*: “The brief was delivered to the lawyer, who immediately saw the errors.”

### Split Infinitives

“To be or to not be” isn’t the question Shakespeare posed. He knew better than to vigorously split his infinitives. An infinitive is the word “to” followed by a verb. Modifiers placed in the middle of the infinitive create split infinitives, and splitting headaches for readers.

Move modifiers that sneak into an infinitive. *Incorrect*: “The law professor worked to steadily gain his students’ respect.” In this sentence, modifier “steadily” splits the infinitive “to gain.” An easy solution is to reposition the modifier elsewhere in the sentence. *Correct*: “The law professor steadily worked to gain his students’ respect.”

Some splits cannot be corrected. *Example*: “We ask the members of the audience to kindly take their seats.” The modifier “kindly” splits the infinitive “to take.” The answer in most cases is to move the modifier out of the infinitive into a safer position. But nothing works in this example. *Incorrect*: “We ask . . . kindly . . .” *Also incorrect*: “We ask the members of the audience to take their seats kindly.”

Some split infinitives are so commonplace, they sound correct despite their grammatical inaccuracy. *Incorrect*: “Foreclosure filings in Supreme Court are expected next year to more than double.” In this sentence, the modi-

fier “more than” splits the infinitive “to double.” Some split infinitives, like this one, cannot be corrected with mere modifier shifts. They require rewriting. *Correct*: “Foreclosure filings in Supreme Court are expected next year to more than double their current level.”

### Dangling Modifiers

A dangling modifier is a word or phrase that modifies the wrong phrase or describes something not in the sentence. The dangling parts of speech can also be transitions, like “hopefully” or “in conclusion.” They can also be participles, which are verbs acting as adjectives in a sentence. Or they can be appositives, subject modifiers equivalent to another subject in the sentence. Dangling modifiers make sentences illogical, usually by allowing something to hang precariously at the beginning of a sentence.

The worst dangling-modifier offender is one that modifies no subject at all, leaving the reader to wonder who performed the action of the sentence. *Incorrect*: “When dangling, avoid using participles.” In this sentence, the word “dangling” is the dangling modifier. “Dangling” is ambiguous: It doesn’t refer logically to any word in a sentence. “Dangling” describes something absent from the sentence. *Correct*: “When writing dangling phrases, avoid using participles.”

*Incorrect*: “To determine whether to reverse, four factors must be considered.” Only a court, not factors, can determine, reverse, and consider. The subject of this sentence, “the court,” is missing, leaving the modifier dangling without a subject. *Correct*: “The court must consider four factors to determine whether to reverse.”

*Incorrect*: “Finding no error, the judgment was affirmed.” In this elliptical clause, the writer fails to explain who found no error or who affirmed the judgment. The solution is to identify the subject. Using a noun or pronoun to identify the actor will eliminate the dangling modifier. *Correct*: “Finding no error, the court affirmed the judgment.”

---

To prevent dangling, identify the subject of the sentence when using transitional words or phrases. *Incorrect:* “Hopefully, she will win her lawsuit.” The transition “hopefully” fails to refer

unforeseen event, made the litigator miss her dinner date.”

Some dangling modifiers confuse by identifying an incorrect subject. *Incorrect:* “Choosing to shop at the

will remedy this dangling modifier. Sometimes abandoning the modifier will make a sentence easier to understand. *Correct:* “Our client must appeal the court’s decision.”

Here are two final suggestions to keep your modifiers in check: Focus on the part of the sentence you want to emphasize and highlight key ideas. Then skip confusion altogether: Instead of adverbs, use concrete nouns and, better, vigorous verbs that don’t require modification. Do that and you’ll rarely have to worry about modifier problems again. ■

1. Groucho Marx playing Capt. Geoffrey T. Spaulding in *Animal Crackers*, Paramount Studios (1930).
2. Walt Disney Studios (1964).

**GERALD LEBOVITS** is a judge of the New York City Civil Court, Housing Part, in Manhattan and an adjunct professor at St. John’s University Law School. He thanks students Melissa Livingston (Brooklyn Law School) and Kathleen Roberts (New York Law School) for their research help. Judge Lebovits’s e-mail address is [GLEbovits@aol.com](mailto:GLEbovits@aol.com).

## Modifiers placed in the middle of the infinitive create split infinitives, and splitting headaches.

to a subject; it leaves the modifier dangling. *Correct:* “I hope she will win her lawsuit.”

A dangling appositive is a subject that refers to the same subject elsewhere in the sentence. For example, in “The partner, the lawyer in the corner office, reviewed the documents,” “the lawyer in the corner office” is the appositive that refers to the partner, the same subject. To avoid dangling, appositives must clearly refer to an equivalent phrase. *Incorrect:* “The litigator worked on her brief until 10:00 p.m., an unforeseen event that made her miss her dinner date.” The appositive “an unforeseen event” doesn’t clearly modify an equivalent subject in the sentence. *Correct:* “Late work, an

larger book store, the legal dictionary was purchased at a lower price.” Because the subject — who chose to go to the larger book store — isn’t identified, the reader will assume that the legal dictionary chose to go to the larger bookstore. The solution is to write in the active voice. Identify who is doing what to whom — subject, verb, object — and your modifiers won’t dangle. *Correct:* “Choosing to go to the larger book store, the law student bought his legal dictionary at a lower price.”

*Incorrect:* “Based on the court’s decision, our client must appeal.” “Based on” modifies “our client” and suggests that the decision was based on “our client.” Inserting a noun or pronoun