June, 2017

Legal-Writing Exercises: Part I

Gerald Lebovits
Judicial Wellness:
The Ups and Downs of Sitting New York Judges
by Hon. Gerald Lebovits
Legal-Writing Exercises: Part I

The lawyers in the courtroom are requested to keep quiet.

Negatives

Sentences written in the negative might appear acceptable, and there’s nothing grammatically incorrect with them. But they aren’t preferred. It’s always better to write in the positive. It looks and sounds better, and it’s easier to understand. Avoid negative prefixes or suffixes like “dis,” “ex,” “ill,” “ir,” “less,” “mis,” “un,” and “non.” Eliminate negative combinations: “never unless,” “none unless,” “not ever,” and “rarely ever.” Negative words to exclude from your writing include “barely,” “except,” “hardly,” “neither,” “not,” “never,” “nor,” “provided that,” and “unless.”

Exercises: Negative

Rewrite the following sentences.

1. An opening statement won’t be convincing unless it’s given with a smile.
2. Most cases rarely ever go to trial.
3. Not only did John run away from the police, but he also hid.
4. There was barely any evidence in this case except for witness testimony.
5. The plaintiff’s injuries weren’t major.

The active voice is more effective than the passive voice.

Exercises: Passive Voice

Rewrite the following sentences.

1. The jurors were asked about their professional history.
2. After the jury deliberated for 10 days, defendant Rosen was found not guilty.
3. The decision was written by Judge Packer.
4. Testimony was heard by the jury from multiple eyewitnesses.
5. The jury was instructed not to talk about the case until jury deliberations.
6. It’s been proposed that the court break for a short recess.
7. The conclusion reached is that any settlement under $200,000 won’t be accepted.
8. Max was killed with a butcher knife.
9. The victim was shot by the defendant.

Exercises: Active Voice

Rewrite the following sentences.

1. An opening statement won’t be convincing unless it’s given with a smile.
2. Most cases rarely ever go to trial.
3. Not only did John run away from the police, but he also hid.
4. There was barely any evidence in this case except for witness testimony.
5. The plaintiff’s injuries weren’t major.
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**Gender Neutrality**

Gender neutrality in writing is a relatively new, and important, phenomenon. Not only is sexist writing offensive, but it focuses the reader on style rather than content. There are four ways to be gender neutral.

1. Use gender-neutral parallel language: If you use “man,” use “woman.” If you use “husband,” use “wife.” Make your subjects agree with their predicates. Avoid the inelegant “he or she,” “s/he,” or alternating between “he” and “she.”

2. Another way to be gender neutral is to rephrase gendered language. The first is to use plural forms, which allow you to replace “he” and “she” with “they.” Example: “If he doesn’t appear in court, the trial will still go forward.” Becomes “If they don’t appear in court, the trial will still go forward.” The second is to eliminate the pronoun; that might require you to rearrange the sentence. Example: “He who isn’t a morning person should find a different line of work.” Becomes “Anyone who isn’t a morning person should find a different line of work.” The third is to repeat the noun. Example: “A court officer will escort you to the jury room. He will do so once all the jurors are assembled.” Becomes “A court officer will escort you to the jury room. The officer will do so once all the jurors are assembled.” The fourth is to use a second-person pronoun like “you,” “your,” or “yours.” Example: “She who has patience should work in Family Court.” Becomes “If you have patience, you should work in Family Court.”

3. Using person rather than man and woman. Rather than using “policeman,” “chairman,” “mailman,” “steward,” and “fireman,” use “police officer,” “chair,” “letter carrier,” “flight attendant,” and “firefighter.” If you see the suffixes “-man” or “-ess,” delete them. If you see masculine terms using the word “man,” delete them. Use “one” to make the sentence gender neutral. Example: “To boldly go where no man has gone before.” Becomes “To boldly go where no one has gone before.” Use gender-neutral parallel language: If you use “man,” use “woman.” If you use “husband,” use “wife.” Make your subjects agree with their predicates. Avoid the inelegant “he or she,” “s/he,” or alternating between “he” and “she.”

4. Exercises: Gender Neutrality

Rewrite the following sentences.

1. New Jersey is New York’s sister state.
2. A judge can’t be biased. She must be impartial.
3. Madam Justice Ruth Bader Ginsburg has been a United States Supreme Court Associate Justice since 1993.
4. He who’s comfortable speaking in public should be a litigator.
5. Ben did what any man would have done: he told the truth.
6. The man and wife robbed banks across the country.
7. A good lawyer takes her job seriously.
8. The waitress was hesitant to testify.
9. A convicted con man will be arraigned tomorrow.
10. “I now pronounce you man and wife!”

Now that you’ve completed the exercises (we hope you didn’t peek at the answers), study the Legal Writer’s answers and compare them with yours.

In the next issue of the Journal, the Legal Writer will continue with more exercises.

**Answers: Passive Voice**

1. This sentence contains a blank passive. We don’t know who asked the jurors about their professional history. Corrected
The attorneys asked the jurors about their professional history.

2. The sentence doesn’t state who found the defendant not guilty. Corrected version: After the jurors deliberated for 10 days, they found defendant Rosen not guilty.

3. This sentence contains a single passive. It’s written in object, verb, subject formation. Corrected version: Judge Packer wrote the decision.

4. This sentence is written in the single-passive voice. It follows the object, verb, subject format. Corrected version: The jury heard testimony from multiple eyewitnesses.

5. This sentence contains a blank passive. We don’t know who instructed the jury. Corrected version: The judge instructed the jury not to speak about the case until jury deliberations.

6. This sentence contains a blank passive. We don’t know who proposed the short recess. Corrected version: Counsel proposed that the court break for a short recess.

7. This sentence contains two blank passives. We don’t know who reached the conclusion (concluded) or who’ll accept the settlement. Corrected version: Plaintiffs concluded that they won’t accept any settlement under $200,000.

8. This sentence contains a blank passive. We don’t know who killed Max. Corrected version: Ryan killed Max with a butcher knife.

9. This sentence is written in the single-passive voice. It’s written in object, verb, subject formation. Corrected version: The defendant shot the victim.

10. This sentence contains a blank passive. We don’t know who asked the lawyers to keep quiet. Corrected version: The court officers asked the lawyers in the courtroom to keep quiet.

Answers: Negative

1. This sentence contains a negative word “unless,” which frames it as a negative sentence. Corrected version: An opening statement will be convincing if it’s given with a smile. Better version: An opening statement given with a smile is convincing.

2. This sentence contains a negative combination, “rarely ever,” that you should stay away from. Corrected version: Most cases settle before trial.

3. This sentence contains a negative word: “not.” Corrected version: John ran away and hid from the police.

4. Rather than “barely,” a negative word, phrase the sentence in the positive. Corrected version: The only evidence in this case was witness testimony.

5. This sentence contains a negative expression. Rephrase is positively. Corrected version: The plaintiff’s injuries were minor.

6. This sentence has a negative combination. Corrected version: A juror will be placed on a panel if the prosecution and the defense consent.

7. This sentence contains both “don’t” and “less than.” Rephrase in the positive. Corrected version: The most successful lawyers spend seven or more hours at work a day.

8. Rather than write “not insignificant,” which is a double negative, phrase it in the positive. Corrected version: How much my client made last year is significant in this case.

9. Instead of writing “shouldn’t be misunderstood,” which is a double negative, phrase it in the positive. Corrected version: My client said she should be understood.

10. Rather than starting the sentence with a negative “no,” write this sentence in the positive. Corrected version: A decision will be made only when both sides provide all the necessary information.

Answers: Metadiscourse

1. The phrase “It is well settled” adds no meaning to the sentence. Corrected version: The defendant knew what she was doing before she stabbed the victim.

2. The phrase “it should not be forgotten” is metadiscourse. It occupies space while not adding anything. Corrected version: The judge told the jurors, “Court is ending early today.”

3. This sentence contains the phrase “please be advised that,” an example of metadiscourse. Corrected version: Cellphone use is prohibited.

4. The metadiscourse in this sentence is “the fact of the matter is that.” Corrected version: The defense attorney concluded, “At the time of the crime, my client was at home with his grandma.”

5. The phrase “it’s come to our attention that” adds nothing to the sentence and should be deleted. Corrected version: The defendant breached the contract.

6. The phrase “the point I am trying to make is that” is unnecessary to the sentence and weakens the conclusion. Corrected version: Defendant is entitled to summary judgment.

7. The phrase “it’s clear that” is unnecessary. Corrected version: The witness is biased.

8. The opening phrase can be deleted without changing the meaning of the sentence. Corrected version: Because of plaintiff’s injuries, he’ll never walk again.

9. The phrase “it’s obvious” is unnecessary. Omit it. Corrected version: The witness is lying under oath.

10. “For all intents and purposes” adds nothing essential to the sentence. Delete it. Corrected version: Those sitting in the courtroom should turn their phones off.

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**QUESTION FOR THE NEXT ATTORNEY PROFESSIONALISM FORUM**

I recently started a solo practice and my practice is growing slowly. A friend recently asked me to appear for him in court when his per diem attorney had a last minute emergency. I realized that while my practice is still growing, making occasional appearances as a per diem attorney might be a good way to bring in some additional fees. In hindsight, after making the appearance on behalf of my friend, I realized I never did a conflict check and didn’t have a written arrangement as to my representation, and I am sure my friend’s client didn’t know who I was. Although I don’t think anyone was concerned about this in the least, did I act improperly? I can’t imagine attorneys that appear on a regular basis as per diem attorneys run conflict checks on a daily basis. But if I do this going forward, what rules do I need to consider when appearing as a per diem attorney. For example, do I need to have formal relationships with each of the attorneys or firms that I appear for? Are there certain types of cases I should reject if I am asked to appear? When I worked for my prior firm, I occasionally would show up for a conference expecting to resolve a discovery dispute only to discover that the opposing attorney sent a per diem attorney with no knowledge of the case or authority to act. It would drive me crazy. Am I exposing myself to professional liability even though I was just asked to show up for a routine conference? Any advice would be appreciated.

Yours truly,
Attorney Foraday

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**Answers: Gender Neutrality**

1. **Use gender-neutral terms.**

   Unless someone is really a sister or brother, replace “sister” or “brother” with “sibling.”
   **Corrected version:** New Jersey is New York’s sibling state.

2. **This sentence isn’t gender neutral. It uses the female pronoun.**

   Making the noun plural is one way to make the sentence gender neutral.
   **Corrected version:** Judges can’t be biased. They must be impartial.
   **Better version:** A judge can’t be biased. A judge must be impartial.

3. **This sentence isn’t gender neutral. It uses a term reserved for a female.**

   Eliminate “Madam.”
   **Corrected version:** Justice Ruth Bader Ginsburg has been a United States Supreme Court Associate Justice since 1993.

4. **This sentence isn’t gender neutral. Eliminate the pronoun.**

   **Corrected version:** Anyone comfortable speaking in public should be a litigator.

5. **This sentence should substitute “man” for “person” or “human.”**

   **Corrected version:** Ben did what any person would have done: he told the truth.

6. **The language in this sentence isn’t parallel.**

   **Corrected version:** The husband and wife robbed banks across the country.

7. **Don’t fix gender issues by internal disagreement.**

   **Corrected version:** Good lawyers take their job seriously. Or: A good lawyer takes work seriously.

8. **To use gender-neutral terms, avoid the suffix “-ess.” Replace “waitress” with “waiter” or “server.”**

   **Corrected version:** The waiter (or server) was hesitant to testify.

9. **Replace “con man” with “con artist” to make the sentence gender neutral.**

   **Corrected version:** A convicted con artist will be arraigned tomorrow.

10. **Use gender-neutral parallel language.**

    **Corrected version:** “I now pronounce you husband and wife!”

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**The Legal Writer**

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**Gerald Lebovits** (Glebovits@aol.com), an acting Supreme Court justice in Manhattan, is an adjunct at Columbia, Fordham, and NYU law schools. He thanks judicial interns Alexandra Dardac (Fordham University) and Tamar Rosen (Benjamin N. Cardozo School of Law) for their research.