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

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No Greater Rights

The Limits of Pro Se Litigation in New York Courts

by Richard L. Weber

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I n the last two columns, the Legal Writer discussed 26 things you should do in legal writing. We continue with a baker’s dozen of things you shouldn’t do: 13 things writers should hate.

1. Hate Boilerplate. Boilerplate is laziness. It’s boring and intimidating at the same time. Readers know when you do a cut-and-paste job. They won’t read boilerplate. Don’t recite your legal arguments. If you or the person from whom you’ve copied your boilerplate made errors in the original document, you’ll repeat them in your boilerplate. Each client and case is unique. Boilerplate won’t be specific to your case. Boilerplate is fine for contracts or forms. It’s unacceptable in a legal argument.

2. Hate Clichés. Avoid clichés like the plague. Clichés make writers look as if they lack independent thought. They’re banal. Eliminate the following: “all things considered,” “at first blush,” “clean slate,” “exercise in futility,” “fall on deaf ears,” “foregone conclusion,” “it goes without saying,” “last-ditch effort,” “leave no stone unturned,” “lock, stock, and barrel,” “making a mountain out of a molehill,” “nip in the bud,” “none the wiser,” “pros and cons,” “search far and wide,” “step up to the plate,” “tip of the iceberg,” “wait and see,” “wheels of justice,” “when the going gets tough,” and “writing on a clean slate.”

3. Hate Misrepresentations and Exaggerations. Be honest. Mistakes are excused. Purposeful misstatements and negligent misquoting aren’t. Honesty is the best policy. It’s also the only policy. To prevent misrepresentations, cite fact and law accurately, using the record for facts and original sources for law. But don’t obsess. Obsessing over accuracy leads to including irrelevant details. Obsessing will make you overly cautious, force you to over-explain, cause you to submit a document late, and lead you to hate being a lawyer.

Exaggerating is a form of misrepresenting. Understate not only to show integrity but also because understating persuades. Understating calls attention to content, not the writing or the writer. Also, concede what you must to make you honest and reasonable.

4. Hate Expletives. “Expletive” means “filled out” in Latin. Avoid expletives: “there are,” “there is,” “there were,” “there was,” “there to be,” “it is,” and “it was.” Examples: “There are three issues in this case.” Becomes: “This case has three issues.”

5. Hate Mixed Metaphors, Puns, Rhetorical Questions, and False Ethical Appeals. Metaphors compare two or more seemingly unrelated subjects. Metaphors make the first subject equal to the second: “All the world’s a stage/And all the men and women merely players.”2 In this example, Shakespeare compared the world to a stage, and men and women to actors. Mixed metaphors combine two commonly used metaphors to create a nonsensical image: “He tried to nip it in the bud but made a mountain out of a molehill.” Puns fail because they transform formal legal writing to informal writing. Puns are for children, not groan readers. A pun is a figure of speech that uses homonyms as synonyms for rhetorical effect. Examples: “Whom did the mortician invite to his

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Legalese makes for bad lawyering.

party? Anyone he could dig up?3
“Families are like judge. Mostly sweet
with a few nuts.”4 “Madness takes
its toll; please have exact change.”5
“Some people are wise, and some,
otherwise.”6 Are rhetorical questions
effective? What do you think? Readers
want answers, not questions. Some
writers use rhetorical questions to
make readers think or to involve them.
Do you agree? Rhetorical questions
fail because you don’t know how the
reader will answer the question or how
involved the reader wants to be. False
ethical appeals are attempts to con-
vince a reader that you’re credible, eth-
ical, honest, or meticulous because you
say so. Instead of telling the reader that
you exhaustively researched the law,

discuss your research exhaustively. Let
your writing speak for itself. Some
false, unnecessary appeals: “It is well
settled that”; “it is hornbook law that”; “this author has carefully considered
the facts and concludes that . . . .”

7. Hate Pomposity. Be formal but
not over the top. Stay away from IQ
or SAT words. No one will be im-
pressed. You’ll look bovine, fatuous,
and stolid, not erudite, perspicacious,
and sagacious. The fewer syllables in a
word, the better. Prefer simple and short
words to complex and long words:
“Adjudicate” becomes “decide.” “Aggre-
gate” becomes “total.” “Ameliorate”
becomes “improve” or “get better.” “As
to” becomes “about” or “according to.”
“At no time” becomes “never.” “Attain
becomes “reach.” “Commence” becomes
“begin” or “start.” “Complete” becomes
“end” or “finish.” “Component” becomes
“part.” “Conceal” becomes “hid.”
“Demonstrate” becomes “show.”
“Donate” becomes “give.” “Effectuate”
becomes “bring about.” “Elucidate
becomes “explain.” “Implement” becomes
“carry out” or “do.” “In case” or “in the
event that” becomes “if.” “Incumbent
upon” becomes “must” or “should.” “Is
able to” becomes “can.” “Necessitate
becomes “require.” “Per annum” becomes
“a year.” “Possess” becomes “own” or
“have.” “Proceed” becomes “go.” “Pro-
cure” becomes “get.” “Relate” becomes
tell.” “Retain” becomes “keep.” “Suffi-
cient” becomes “enough.” “Terminate
becomes “end,” “fire,” or “finish.” “Util-
lize” becomes “use.”

Pomposity arises when writers go out
of their way to sound intelligent
but then err. For example, you’ll sound
foolish if you try to use “whom” and
then use it incorrectly. Incorrect: “Jane is
the person who defendant shot.” Better:
“Jane is the person whom defendant
shot.” Best: “Jane is the person defen-
shooting.” Incorrect: “Whom shall I say
is calling?” The answer is, “He [or she]
is calling.” Better: “Who shall I say is
calling?” Best: “Who’s calling?”

You’ll also sound pompous if you
misuse reflexive and intensive pro-
nouns like “myself,” “yourself,”
yourself,” “myself,” “themselves,” and “itself.”

Consider this dialogue between A and
And yourself?” Correct: A: “How are you?
B: “Fine. And you?” Why would
anyone say “How are yourself?”

8. Hate Abbreviations, Contractions,
and Excessive or Undefined Acronyms.
Don’t use these abbreviations: “i.e.,”
“e.g.,” “re,” “etc.,” and “N.B.” Be for-
mal: use “facsimile,” not “fax.” Leave
contractions, which are friendly and
sincere, for informal writing, e-mails,
and Legal Writer columns. Eliminate
“aren’t,” “couldn’t,” “don’t,” “haven’t,”
“it’s,” “isn’t,” “shouldn’t,” “wouldn’t,”
and “you’re.” An acronym is an
abbreviation formed from the first
letter of each word of a title. Define
terms and nouns you’ll frequently
use in your legal document: Depart-
ment of Housing Preservation and
Development (DHPD); New York
Stock Exchange (NYSE). Don’t use
quotation marks or “hereinafter
referred to as” to set out the acronym:
Judge Me Not Corporation (“JMNC”)
becomes Judge Me Not Corporation
(JMNC). Common legal acronyms
need not be defined: CPLR, not Civil
Practice Law & Rules (CPLR). If you
use acronyms, use articles that modify
the acronym, not the word. Example:
“An NYPD officer,” not “A NYPD
officer.” A person’s name or title need
not be defined. Incorrect: “John Smith
(Smith)” or “John Smith, the architect
(the Architect).”

9. Hate Mystery and History. Legal
documents aren’t mystery novels.
Don’t wait to surprise your readers
until the end. Don’t bury essential
issues in the middle, either, or give
your readers clues along the way, hop-
ing they’ll catch them on time. Few will
try to decipher what you have to say.
Also, don’t inundate your readers with
the history of the case law or statute.
Readers don’t want a history lesson.
They want current law and how it applies.

10. Hate Inconsistency. Be consistent in tone. Don’t be formal in one place and informal in another. Be consistent in point of view: Don’t use your point of view in one place and the reader’s in another. Example: “Writers must not shift your point of view.” Be consistent in reference: Don’t write “my client” in one place, “this writer” in another, and “plaintiff” in a third. Be consistent in voice. Don’t write “you” in one place and “I” in another. Be consistent in style. Examples: If you use serial commas in one place, use them everywhere. If you write “3d Dep’t” in one citation, don’t write “3rd Dep’t” in another.


13. Hate Attacks or Rudeness. Condescending language, personal attacks, and sarcasm have no place in legal writing. Attacking others won’t advance your reasoning. This behavior, possibly sanctionable, distracts readers and leaves them wondering whether your substantive arguments are weak. Wounding your adversary, your adversary’s client, or the judge is ineffective. Instead, be courteous and professional. Never be petty. But if you must attack, aim to kill, metaphorically speaking.

In the next column, the Legal Writer will continue with the next baker’s dozen of don’ts. Following that column will be three columns on grammar errors, punctuation issues, and legal-writing controversies. Together with the two preceding columns on legal writing’s do’s, this series represents legal writing’s do’s, don’ts, and maybes.