Five Simple Ways to Improve Your Legal Writing Skills

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Originally published in *The Trial Advocate,* Vol. 41 No. 3 (2022). Used with permission.

There is no shortage of legal writing books and articles that young lawyers can use to improve their writing skills. But given all the demands the legal profession places on us, lawyers, when can one find the time to read and, most importantly, implement all that advice, some of which is most unrealistic given the deadline-driven reality we live in? My aim in this column is to repeat as little as possible from that textbook advice. My focus will be on some practical tips and how to implement them in the context of writing persuasive summary judgment motions or responses in opposition to such motions under the recently amended Florida summary judgment standard.

Know your audience and adapt your writing style to it.

Writing legal memoranda for a senior attorney. If, for example, a senior attorney in your firm asks you to write a legal memorandum addressing all the potential grounds for summary judgment in a particular case, your task is not simply to gather a collection of authorities, endless string cites, and block quotes. Rather, it is to survey the parties' pleadings in the case, the evidence produced during discovery, and the applicable law, and provide a comprehensive roadmap for a summary judgment motion. The young lawyer's common mistake is to inundate the senior attorney with too much information, without much analysis, when the senior attorney expects a thorough analysis and an objective evaluation of the chances of success. This entails a discussion of pertinent authorities applied to the facts of the case, and an objective evaluation of the merits of each ground for summary judgment. Do not be afraid to be assertive and write confidently when you assess the strengths and weaknesses of the movant's position.

Explain whether you recommend moving for final or partial summary judgment. Perhaps discovery is still ongoing and you have not yet developed the evidentiary basis for certain defenses. Identify those defenses, briefly state what other evidence is needed to move for summary judgment on those defenses, and explain why you need to depose additional witnesses and why an affidavit from the corporate representative would not suffice. If a certain defense (fraud, for example) is not suitable for summary judgment, do not be afraid to recommend against moving for summary judgment on that defense. Let the senior attorney know if you think the answer and affirmative defenses must be amended as a result of discovery before moving for summary judgment.

While you plan and draft the memorandum, keep in mind that it should serve two purposes for the senior attorney: it should be easily convertible into a summary judgment motion and into a report to the client. If you accomplish this task successfully, it is very likely that the senior attorney will be impressed with your work, will rely on you regularly and give you more and more responsibility.

Writing a summary judgment motion for filing with the court. The amended summary judgment rule requires trial judges to state on the record their reasons for granting or denying summary judgment. The reason for this requirement is to ensure "that Florida courts embrace the federal summary judgment standard in practice and not just on paper."[10] In clarifying the degree of specificity needed to comply with this requirement, the Florida Supreme Court stated that "it will not be enough for the [trial] court to make a conclusory statement that there is or is not a genuine dispute as to a material fact. The court must state the reasons for its decision with enough specificity to provide useful guidance to the parties and, if necessary, to allow for appellate review."[11] Surprisingly, more than a year after the amendment of the rule, there are still trial judges who do not comply with this requirement. Thus, your job is to educate the judge. Do not wait to do so until it is too late, or else you will risk a reversal that makes your client and the court unhappy and wastes a lot of resources. Florida appellate courts have already enforced this requirement and will likely continue to do so.[12]

To know your burden on summary judgment, know what the burden of proof will be at trial. The new standard for summary judgment is similar to the directed verdict standard and "the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require sub-

mission to a jury or whether it is so one-sided that one party must prevail as a matter of law."[13] If the moving party, which you represent, bears the burden of proof at trial, then you must establish all essential elements of the defense(s) you are relying on to obtain summary judgment.[14] The moving party "must support its motion with credible evidence ... that would entitle it to a directed verdict if not controverted at trial."[15] If the nonmoving party bears the burden of proof at trial, then the moving party may obtain summary judgment by establishing the nonexistence of a genuine issue of material fact as to any essential element of the nonmoving party's claim or affirmative defense.[16] The moving party does not have to "support its motion with affidavits or other similar material *negating* the opponent's claim."[17] The moving party may discharge the burden by showing the court that "there is an absence of evidence to support the nonmoving party's case."[18]

Despite this change, there are plenty of trial judges who still feel compelled to deny summary judgment based on some irrelevant dispute of fact. Your task is to educate the judge that summary judgment is no longer a disfavored means of resolving a case and to persuade the judge that summary judgment for your client is warranted. You can do that best by connecting your arguments with the legal standard and the burden of proof.

Have a structure and a roadmap before you start writing and stick to it.

Many attorneys start writing without a plan or a clear structure in mind, hoping that eventually the arguments will reveal themselves to them by trial and error. This approach might lead to a quicker first draft, but that draft will be in need of many re-writes prior to it reaching a satisfactory final draft status. Planning and structuring your arguments is key to persuasive and succinct writing. It is also the most efficient path to the final product. Although it might take longer before a draft is complete under this approach, that draft will be very close to the final product and will only need minor edits for typos and style. Before you start a new paragraph, ask yourself what message you want to convey in that paragraph and stick to that message. That way, the points you want to make will not be scattered throughout the legal document you are drafting, but will be succinctly addressed in one or two paragraphs at most.

Less is almost always more.

> "I have only made this letter longer because I have not had the time to make it shorter."[19]

Succinct writing takes time. But it is time well spent. Judges and law clerks read thousands of pages each week. If you can express your arguments succinctly they will be able to follow and remember them better.

In our example of drafting a summary judgment motion, how can you write succinctly without sacrificing the content of your motion? In addition to having a roadmap, writing each paragraph with a purpose in mind, and avoiding unnecessary arguments that detract from the main issues in the case, try to condense your statement of undisputed material facts to include only the material facts. If, for example, your case involves a breach of a property insurance contract, ask yourself if it is really a material fact that a policy was issued to the policyholder and the policy was in effect between certain dates, covering certain property. Unless there is a dispute as to whether the loss occurred during the policy period, those facts are most likely not material. Instead of adding every insignificant fact to your statement of undisputed material facts, try to tell the judge a story about your case in an introductory section that informs the court about the background of the case, the issues for the court's determination and the reasons why the court should rule in your client's favor.

Avoid unnecessary use of dates. Unless dates are essential for the issues presented — e.g., when you have a late notice issue — there is no need to inundate the court with dates. Avoid countless string cites for well-established legal principles. And do not overcomplicate your analysis by resorting to legal treatises and analogizing with federal law when the issues you are analyzing are well-settled. Choose the number of block quotes wisely. When the precise language of your source is not critical, try to paraphrase and simplify as much as possible, rather than parrot legal authority. Avoid long conclusions that summarize the arguments; a summary of the argument should be included upfront when you provide the court with a roadmap. Instead, focus your conclusion on your prayer for relief and make sure you ask for alternative relief if appropriate. If you are writing a legal memorandum for a senior attorney, use the conclusion to provide a recommendation, not a summary.

There are, however, times when you need to provide the court with a more detailed recitation of the facts or of the procedural history of the case. For example, when your opponent has presented a distorted version of the case or facts, take the time to provide the court with the full story rather than resort to attacking your opponent.

Develop a concise writing style that avoids unnecessary verbiage. Try to get rid of antiquated words or phrases like: "herein," "hereto," "hereinafter," "therewith," "aforementioned," "notwithstanding anything to the contrary contained herein," "notwithstanding the aforementioned."

For example, write:

On May 15, 2021, the homeowners notified their insurer of the loss. (12 words)
Not
On or about May 15, 2021, Mr. and Mrs. Jones gave notice of the loss to their insurer. (18 words)
The insurer investigated the claim. (5 words)
Not
The insurer proceeded to conduct an investigation of the claim. (10 words)

These might seem small changes, but they can make a big difference if you consistently apply them throughout your document. You will end up with a concise, easy to follow legal document and the reader will appreciate that.

Write with integrity.

As a former judicial staff attorney and a career law clerk in state and federal court, I can say without hesitation that

misrepresenting the facts or the law and casting aspersions on your adversary or the court is by no means good advocacy. This calls into question your professional judgment and the strength of your arguments. If such remarks make their way into your initial draft, make sure to delete them from your final draft or otherwise you risk damaging your reputation, which will ultimately be detrimental to your clients.

> As Justice Ginsburg once wrote in an article on appellate advocacy:
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> Above all, a good brief is trustworthy. It states the facts honestly. It does not distort lines of authority or case holdings. It acknowledges and seeks fairly to account for unfavorable precedent. A top quality brief also scratches put downs and indignant remarks about one's adversary or the first instance decisionmaker. These are sometimes irresistible in first drafts, but attacks on the competency or integrity of a trial court, agency, or adversary, if left in the finished product, will more likely annoy than make points with the bench.[20]

Try to apply these principles consistently and you will earn the respect of judges and other practitioners.

Learn to deconstruct and you will know how to construct

Some reputable legal scholars have suggested that "[t[he best way to become a good legal writer is to read good prose."[21] And by good prose they do not mean legal prose.[22] This assumes good writing is "contagious," when in fact it takes a lot of effort and work to become a good writer.

I think reading good prose is a great way to polish already good writing skills, but will hardly make anyone a good legal writer. There is a more efficient way to learn the art of persuasive legal writing. Try to deconstruct your opponents' writing and you will soon learn to avoid their mistakes. In the process, you will become a much better legal writer.

For example, below is a redacted[23] portion of a "statement of undisputed material facts" from a summary judgment motion written after the amendment of the summary judgment standard in Florida. In the process of responding to it, as required by the amended summary judgment rule,[24] one inevitably learns how to draft a better statement of undisputed material facts.

1) *On or about March 13, 2021, there was a fire within Orchid Club Apartments, Unit 1313 at 1311 NE 13th Street, Delray Beach, FL, within which children AM and SM lost their lives.*

2) *Defendants Orchid Club West, LLC and Careless Management Corp., are owners, lessors and landlords of Orchid Club Apartments, which includes but is not limited to 1311 NE 13th Street, Unit 1313, Delray Beach, FL (hereinafter referred to as the "subject apartment").*

3) *As per City of Delray Beach, Code of Ordinance, §113.13, NFPA 101 Fire Code & Life Safety Code codified by §633.202, Florida Statutes, it was and currently remains, the non-delegable responsibility of owners, landlords and lessors of rental housing and apartment buildings to install working smoke detection devices within all apartment units and all bedrooms and/or sleeping areas within each apartment unit. It also was and is the non-delegable responsibility of owners, landlords and lessors to inspect, test and maintain all smoke detection devices within all apartment units.*

4) *In violation of Fire Safety Codes, the Defendant owners, landlords and lessors of Orchid Club Apartments failed to install, inspect, test and maintain smoke detection devices within all rental apartment units and rental apartment bedrooms.*

5) *On March 13, 2021, Orchid Club Apartments, Unit 1313 at 1311 NE 13th Street, Delray Beach, Florida did not have operational smoke detection devices and was in violation of the Fire Safety Codes.*

6) *The fire Safety Codes are all aimed at public safety and establish a duty to take precautions to protect a particular class of persons from a particular injury or type of injury.*

7) *Count I through IV of Plaintiff's Amended Complaint, e-filed with the Court on June 4, 2022, contains the following language as to each Defendant: [Extensive block quote from the amended complaint followed].*

Without even knowing the facts of the case, one can tell there is a lot wrong with this recitation of "undisputed material facts." First, there is no citation to the record, as required by the amended Florida Rule of Civil Procedure 1.150(c)(1)(A) (which specifies that the parties must support their factual position by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials…"). Second, the alleged statement of undisputed material facts consists mostly of: recitations of law (¶ 3); arguments, speculations, and legal conclusions (¶¶ 4, 5, 6); and allegations in the complaint, which are not taken as true at the summary judgment stage (¶ 7). Third, although the information in paragraph 1 is true, the death of one of the children was immaterial because there was no claim brought for her death. Similarly immaterial is the address and the unit number where the fire occurred, yet that information is repeated in several paragraphs. The assertion in paragraph 5 was disputed. Thus, in seven paragraphs of alleged material facts, there is a single undisputed material fact: namely, that one child died as a result of a fire.

If you accomplish well your task of responding to your opponents' position, you will inevitably become a better legal writer, because next time you draft a legal document you will be more careful not to repeat the same mistakes.

Conclusion

Persuasive legal writing is the product of logical thinking and meticulous editing to attain clarity and style. This article provides five ways to improve your legal writing skills. Some are easy to implement, others take more time, experience, and discipline. To attain competence in legal writing one must continue to grow.

[1] *In re Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d 72, 77 (Fla. 2021).
[2] *Id.*
[3] See, e.g., *Jones v. Ervolino*, 339 So. 3d 473 (Fla. 3d DCA 2022) (reversing summary judgment because neither the trial court's oral pronouncement nor its written order stated on the record the reasons for granting or denying the motion as required by the newly amended summary judgment standard under Florida Rule of Civil Procedure 1.510(a)(a).1).
[4] *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986) (explaining that the movant is entitled to summary judgment where the evidence is such that it would require a directed verdict for the movant and noting that the "genuine dispute" summary judgment standard is similar to the "reasonable jury" directed verdict standard).
[5] *United States v. Four Parcels of Real Prop, in Greene and Tuscaloosa Counties,* 941 F. 2d 1428, 1438 (11th Cir. 1991).
[6] *Id.* (internal quotation marks and citations omitted).
[7] *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).
[8] *Id.* at 323 (emphasis in original).
[9] *Id.* at 324.
[10] Blaise Pascal, The Provincial Letters, Letter 16, 1657.
[11] The Honorable Ruth Bader Ginsburg, *Remarks on Appellate Advocacy*, 50 S.C.L. Rev. 567, 568 (1999).
[12] Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 62 (Thomson/West 2008) (quoting Judge Easterbrook of the Seventh Circuit).
[13] *Id.* ("And legal prose ain't that.").
[14] All names, addresses, and dates are fictitious.
[15] Keep in mind that if you do not respond and address all the movant's alleged undisputed material facts, you risk having the court consider the facts undisputed for purposes of the motion. Fla. R. Civ. P. 1.150(e)(2).