

# Legal Writing Faux Pas

25 Common Slipups and How to Avoid Them

BY GINETTE CHAPMAN

Even lawyers who are good writers make writing mistakes. It may be that they don't have a formal editing process,<sup>1</sup> or that they don't know certain rules. Unfortunately, legal writing gaffes can undermine lawyers' credibility and detract from their arguments.

Can you consistently catch mistakes in legal documents? In this article, you can try your hand at correcting an intentionally flawed writing sample. In the process, you'll learn a little about some common errors I find when editing documents for other lawyers.

## Test Your Editing IQ

By my count, the following paragraph contains 25 errors and patent writing no-no's (though reasonable minds could differ). How many issues can you spot?

In his January 3, 2018 motion, Jones cites to literally countless Federal cases. He seeks to persuade the court that *pro se* litigants need not comply with generally applicable standards. According to Jones' pleading, the judiciary must accept his substandard filings without further inquiry and they must disregard his flouting of filing rules. It is clear that Jones's interpretation is at odds with well established legal standards. Jones has now filed over a dozen poorly-conceived motions which inaccurately cite legal authority, fail to flush out arguments and ignore relevant rules. Yet, the court heretofore has shown leniency towards Jones, and has accepted all of his submittals. This should go no farther – the court should reject any future nonconforming filings.

## The Missteps

Now I'll identify each error, explain why it's a problem, and offer a solution. I primarily rely on *The Redbook: A Manual on Legal Style*<sup>2</sup> as the

authority on legal writing. A corrected version of the writing sample appears at the end of the article.

1. "January 3, 2018 motion" should be rewritten. Normally, when a full date appears mid-sentence, a comma belongs after the year. *The Redbook* directs writers to omit the comma if a full date is used as an adjective, as here, though other authorities on style disagree. Authorities do agree it's best to recast the sentence to avoid awkwardness, for example: *In his motion filed January 3, 2018, Jones . . .*

2. "[C]ites to" should simply read *cites*. One does not *cite to* a legal authority—one *cites* a legal authority.

3. "[L]iterally" is misused. *Literally* is generally accepted to mean *actually* or *exactly*, not *truly* or *virtually*, and misuse of the term grates on many readers (figuratively, not literally). Here, it's theoretically possible (though perhaps unappealing) to count all of the cases that Jones cited, so *literally* is not correct.

4. "Federal" should be lowercase. The terms *federal* and *state* should not be capitalized unless part of a proper name or title. Examples of correct capitalization include *federal law*, *state regulations*, and *Federal Reserve System*.

5. "[P]ersuade the court that" is a misuse of *persuade*. *Persuade* is used in connection with actions. *Convince* is used in connection with mental states. So we *convince* a person to believe our theory, and we *persuade* the person to act upon our theory. By extension, *persuade* is used with *to*—we *persuade* someone *to* do something, we do not *persuade that*.

6. "[P]*ro se*" should not be italicized. To determine whether to italicize a non-English term, follow the style of the entry in *Black's Law Dictionary*. Terms to italicize include *in forma pauperis* and *inter alia*. Terms *not* to italicize include *arguendo*, e.g., *i.e.*, *in limine*, *prima facie*, *pro hac vice*, *pro se*, *quantum meruit*, and *res judicata*.<sup>3</sup> If you find yourself using a

Latin phrase, however, consider using plain English instead for readability (*among other things* rather than *inter alia*).

7. "Jones'" should be written *Jones's*. To form the possessive of a person's name ending in *s*, an apostrophe and *s* normally should be placed after the name. Other examples are *Justice Hobbs's opinion*, *Williams's defense*, and *Gonzales's argument*. An exception exists for ancient names such as *Jesus* and *Socrates*, which take only an apostrophe.

8. "[P]leading" should be *motion*. These terms are not interchangeable. *Pleading* (as a noun) means only those documents that set forth or respond to allegations, claims, denials, or defenses.

9. "[F]urther inquiry and" probably should have a comma after *inquiry*. The next part of the sentence is an independent clause because it can stand on its own as a sentence. A comma is normally used to join two independent clauses separated by coordinating conjunctions (*and*, *but*, *for*, *nor*, *or*, *so*, *yet*). I say that the sentence *probably* should have a comma because some of the rules governing commas are flexible, to a degree. As relevant here, writers may omit a comma in particularly short compound sentences.

10. "[T]hey" should be *it* because *the judiciary* is an entity. Lawyers often mistakenly use plural pronouns (*they*, *their*) for corporations, governmental agencies, and other entities. A correct example is: *The corporation argues it acted lawfully*. In the unusual circumstance that a writer wishes to emphasize an entity's members, the writer may use a plural pronoun for the entity (e.g., *the panel clapped their hands*).

11. "It is clear that . . ." is crummy writing for two reasons. First, beginning a sentence with *It is* or *There are* is fine in some situations but often leads to wordiness—as it does here. Avoiding this type of sentence construction with a rewrite is usually a good choice. A better start to the sentence is *Jones's interpretation is . . .*

12. Second, as used here, *clear* is extraneous and conclusory. Descriptors and modifiers such as *clear*, *obvious*, *utterly*, and *wholly* add no meaningful content. In fact, readers often perceive an argument as weaker when a sentence includes one of these terms. Show. Don't tell. Explain why something is clear, rather than simply asserting it is.

13. “[W]ell established” should be hyphenated. Where a phrase functions as an adjective before a noun (known as a phrasal adjective or compound modifier), the phrase normally should have a hyphen (*the four-year sentence, a part-time job*). This reader-friendly rule promotes clarity. However, phrases with an *-ly* adverb do not follow this rule (as explained below), and phrasal adjectives should not be hyphenated when they come after the noun (e.g., *the standards are well known*).

14. “[O]ver a dozen” should read *more than a dozen*. *More than* is often preferred to *over* in reference to numbers and quantities. Though this usage preference is evolving somewhat, you’ll run less risk of alienating your reader if you observe this distinction.

15. “[P]oorly-conceived” should not have a hyphen. A phrasal adjective that begins with an *-ly* adverb normally does not take a hyphen (e.g.,

*frequently cited case and closely held corporation*).

16. “[M]otions which” should be changed to *motions that*. *That* is used to identify information essential to the meaning of the sentence, while *which* is used to identify nonessential information. A comma is usually required before *which* when it’s used in this sense.

17. “[F]lush out arguments” should read *flesh out arguments*. To *flesh out* means to give something substance, so ideas, plans, and the like are *fleshed out*. *Flush out* means to force from a hiding place (e.g., *the suspect was flushed out of the woods*).

18. “[A]rguments and ignore” should have a comma after *arguments*. The serial, or Oxford, comma is placed before the last item in a series, before *and* or *or* (e.g., *lions, tigers, and bears*). The serial comma eliminates ambiguity and is standard in legal writing.

19. “Yet, the court . . .” has a misplaced comma.

When a sentence begins with a coordinating conjunction (*and, but, for, nor, or, so, yet*), a comma normally should not follow that term. Lawyers often eschew sentences that begin with coordinating conjunctions. But selective use of this formulation is a great way to vary sentence structure and enliven writing (as this sentence attempts to illustrate).

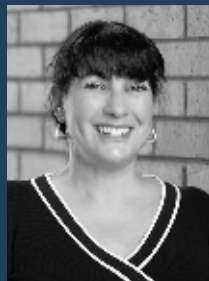
20. “[H]eretofore” is a blatant example of legalese. Lawyers should generally favor plain language over legalese. Doing so promotes understanding of your writing and signals that you understand modern standards of legal practice. Choose *until now* rather than *heretofore*, *request* rather than *pray*, *unique* rather than *sui generis*, and so on. In the writing sample provided, *heretofore* simply can be deleted without replacement.

21. “[T]owards” should be *toward*. *Toward* is standard in American English; *towards* is more common in British English.

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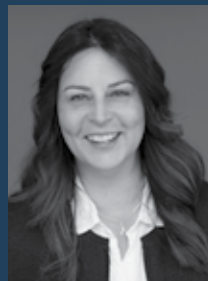
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22. “Jones, and has accepted” should read either (1) *Jones, and it has accepted* or (2) *Jones and has accepted*. Unless needed to avoid confusion, a comma does not belong before the second part of a compound predicate (two or more verbs sharing the same subject). The solution here is either to (1) turn the last part of the sentence into an independent clause (which normally is preceded by a comma) or (2) drop the comma.

23. “This” is often a poor initial word for sentences because it may be unclear what it refers to. Here, *this* could refer to the court showing leniency, to the court accepting submittals, or to both. Starting the sentence with *The court’s leniency* would be one fix.

24. “[F]arther” should be *further*. *Farther* is normally used in reference to physical distances, while *further* is used in a figurative sense. Here, the term is used figuratively, in terms of the court’s approach.

25. “[F]arther – the” has an en dash rather than an em dash. Em dashes (—) should be used for breaks in sentence structure, while en dashes (–) should be used to separate number and date ranges.

**Corrected Sample**

Here’s the writing sample without errors:

In his motion filed January 3, 2018, Jones cites myriad federal cases. He seeks to convince the court that pro se litigants need not comply with generally applicable standards. According to Jones’s motion, the judiciary must accept his substandard filings without further inquiry, and the courts must disregard his flouting of filing rules. Jones’s interpretation is at odds with well-established legal standards. Jones has now filed more than a dozen poorly conceived motions that inaccurately cite legal authority, fail to flesh out arguments, and

ignore relevant rules. Yet the court has shown leniency toward Jones and has accepted all of his submittals. The court’s leniency should extend no further—the court must reject any future nonconforming motions.

**Conclusion**

Knowing accepted writing standards is an essential first step to error-free writing. A second key step is to follow a disciplined editing process to ensure you catch slipups. If you make certain mistakes over and over, consider integrating those issues into a checklist for finalizing a document. Also consider reading your document aloud and asking a peer or legal editor to review your work to help you spot mistakes. By eliminating errors from your writing, you will more powerfully and persuasively advance your arguments. ● **CL**



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**NOTES**

1. My previous article explained how to create a disciplined editing process and provided a sample cleanup checklist. Chapman, “Legal Editing Demystified: A Process for Polishing Your Prose,” 50 *Colo. Law.* 18, 20 (Feb. 2021), <https://cl.cobar.org/departments/legal-editing-demystified>.
2. Garner, *The Redbook: A Manual on Legal Style* (4th ed. West Academic Pub. 2018).
3. See also Rule 7(b) in *The Bluebook: A Uniform System of Citation* (21st ed. Claitors Pub. Div. 2020) (“Latin words and phrases that are often used in legal writing are considered to be in common English usage and should not be italicized. However, very long Latin phrases and obsolete or uncommon Latin words and phrases should remain italicized.”).

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