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## Creating an Any List guide to compelling legal writing

**M**y newest fascination is an app called Any List. It's a vehicle for our family to register lists of household tasks that need to be done. Users pull up the app, complete the tasks and check them off. It's a win-win. Our house runs more smoothly, and I contribute more to taking care of the house.

Now, you may be quick to object on the grounds of relevance, but the objection is denied. What follows is my own Any List for legal writers: When you are writing a brief, consult this list and your writing will improve.

### 1. The introduction is crucial.

"It was the best of times, it was the worst of times. ..." Charles Dickens, "A Tale of Two Cities." A good writer grabs your attention at the outset of the work. Likewise, the most important section of a brief is the introduction.

A good introduction tells the court what the case is about, the issues to be resolved and the reason why your side wins.

It should be concise and persuasive. Avoid formal case citations and technical jargon.

Bottomline, the court should be able to read only the introduction and understand your position. The rest of the brief then flows from the framework established in the introduction.

### 2. Pay attention to topic sentences.

Organization is critical. And nothing confuses a reader more than deficient topic sentences. Every paragraph should start with a topic sentence that previews or summarizes what follows. If a paragraph's content strays from the topic sentence,

the reader will get lost.

### 3. Avoid unnecessary definitions.

Use common sense when defining parties or rules. Here is an example of misuse: "The district court should dismiss the claims asserted by plaintiff John Doe ('Doe') against defendants Richie Rich ('Rich'), Charlie Brown ('Brown'), and ACME Corporation ('ACME') pursuant to Federal Rule of Civil Procedure 12(b)(6) ('Rule 12(b)(6)')."

These definitions are unnecessary and distract the reader. Only use definitions if they help the reader understand who is who and what is what. Most definitions are unnecessary.

**4. Focus on readability.** When writing, always consider the reader's perspective. For example, drafting HEADINGS IN ALL CAPS IS A BAD IDEA. ALL CAPS IS ABRASIVE, DIFFICULT TO READ AND DISTRACT FROM YOUR MESSAGE.

The same is true of footnotes. Sometimes they are needed, but

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use them sparingly. Indeed, the exercise of reading a footnote is just that — an exercise — one that distracts from your message.

The 7th Circuit's style guide, "Requirements and Suggestions for Typography in Briefs and Other Papers" (available on the court's website), is an excellent reference for enhancing readability.

**5. Eliminate mechanical legalese.** Unless required by some

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strange local rule, remove meaningless legalese, which adds nothing to your argument. Readers never learned anything reading words and phrases such as "Wherefore" or "represented by undersigned counsel." Make every word count.

**6. Be active, not passive, and eliminate excessive words.** Primarily using active voice and editing with an eye toward cutting words will result in better writing. Indeed, this article was originally 3,000 words. OK, that may be an exaggeration, but short and sweet is usually a sound principle of legal writing.

**7. Make case cites helpful.** Ideally, the court will be able to rule in your favor based on only what you provide. This means you should explain why and how a prior case supports your position.

Here are two specific suggestions: If you are not discussing a case in detail, include a parenthetical explaining why the case supports your position. Simply citing a case with a "See" citation does not educate the court as to how and why the case lends credence to your argument.

Second, when discussing a case in detail, leave out details about the case that do not add value to the analysis. For example, party names, dates or case-specific facts are rarely important in commu-

nicating the legal proposition at issue. If anything, including such details only muddies the water by giving readers more information than they need.

To illustrate, don't do this: In *Richards*, retired schoolteacher Thomas Richards took a prescription drug, Experimentril, from September 2006 to September 2008, to treat his anxiety. He alleged that Experimentril's manufacturer, ACME Pharmaceuticals Ltd., failed to test the drug sufficiently. Instead, do this: In *Richards*, a prescription drug consumer brought a failure-to-test claim against a manufacturer.

**8. Go old school.** No one likes typos, but I really hate them. Look, your brief will win or lose on the merits of your arguments, but silly, avoidable mistakes can undermine a writer's credibility with a court.

To that end, it's helpful to print out the final version of your brief, lock yourself in a quiet room, grab a ruler and read every inch of the brief, line by line. You will be amazed at the number of nits you can catch, from misused or missing words to spacing and formatting issues.

And this applies to the whole brief.

We once filed a pristine brief. Proofread every word, two times. After a full day of back-patting and self-congratulations, we looked at the brief and saw the cover: "OPENING BRIEF AND REQUIRED SHORT APPENDIX OF THE DEFNDANT APPELLEE." Lesson learned: double-check everything.

Other tips could be added to this Any List, but if you keep these in mind, your writing will improve.