

contents

Foreword xxi
Help for Writers xxv
Acknowledgments xxvii

Section One ■ The Mechanics of Writing: Grammar, Punctuation, and Spelling 1

Chapter 1. Grammar 3

A. Introduction 4

B. Sentence Fragments 4

C. Run-On Sentences 4

D. Subject-Verb Agreement 6

1. Multiple-Word Subjects 6
2. Indefinite Pronouns 7
3. Collective Nouns and Company Names 8
4. Intervening Words 9
5. Inverted Sentence Order 9

E. Modifiers 10

1. Misplaced Modifier Phrases 11
2. Misplaced Prepositional Phrases 11
3. Limiting Modifiers 12
4. Dangling Modifiers 12
5. Squinting Modifiers 13

F. Split Infinitives 14

G. Pronouns 15

1. Personal Pronouns 15
2. Pronoun Agreement 17
 - a. Indefinite Pronouns 17
 - b. Collective Nouns 18
 - c. Generic Nouns 18

3. Pronoun Reference 18
 - a. Ambiguous References 18
 - b. Implied References 19
 - c. Vague References 19
 - d. Indefinite Use of *It* and *They* 19
4. Use of *Who* and *Whom* 19
5. Use of *That* and *Which* 20
6. Reflexive Pronouns 22
7. Gender-Linked Pronouns 23
 - a. Six Techniques for Gender-Neutral Language 23
 - b. Constructions to Avoid 24
 - c. Letters 24
 - d. Closing Thoughts on Gender-Neutral Language 25
8. Special Pronoun Situations 25
 - a. Use of *We* and *Us* 25
 - b. Comparisons with *Than* or *As* 25
 - c. Gerunds 26
9. Shifts in Pronouns 26

H. Conjunctions 27

1. Coordinating Conjunctions: *And, But, For, Nor, Or, So, Yet* 27
2. Correlative Conjunctions: *Both-And, Either-Or, Neither-Nor, Not Only-But Also, Whether-Or* 27
3. Subordinating Conjunctions 28

Chapter 2. Punctuation 29

A. Introduction 30

B. End Punctuation 30

1. Using Periods 31
2. Using Question Marks 31
3. Using Exclamation Points 32

C. Commas 32

1. Rules for Comma Use 32
2. Comma Misuse 37

D. Apostrophes 39

1. Possessives 40
 - a. General Rules 40
 - b. Proper Names 40
 - c. Special Situations Involving Apostrophes 41
2. Contractions 43
3. Numbers and Letters 43

E. Colons 44

F. Semicolons 45

- G. Quotation Marks 46**
- H. Parentheses 47**
- I. Other Punctuation Marks: Dashes, Hyphens, and Slashes 49**
 - 1. Using Dashes 49
 - 2. Using Hyphens 50
 - 3. Using Slashes 51

Chapter 3. Spelling 53

- A. Introduction 54**
- B. Strategies to Improve Spelling 54**
 - 1. Use a Dictionary 54
 - 2. Develop a “Hit List” of Commonly Misspelled Words 54
 - 3. Pronounce Your Words Carefully 55
 - 4. Use Misspelled Words as Passwords 55
 - 5. Use Mnemonic Devices 55
 - 6. Don’t Rely Only on Your Spell-Checker 55
 - 7. Proofread Carefully 55
 - 8. Learn Some Spelling Rules 55
- C. Compound Words 58**
- D. Capitalization 60**
 - 1. General Capitalization Rules 61
 - 2. Capitalization in Legal Documents 63
- E. Abbreviations 65**
 - 1. General Principles 65
 - 2. Legal Abbreviations 68

Section Two ■ Features of Effective Legal Writing and Organization 71

Chapter 4. Features of Effective Legal Writing 73

- A. Introduction 74**
- B. The Plain English Movement 74**
- C. Accuracy 75**
 - 1. Introduction 75
 - 2. Word Choice 76
 - 3. Vague Words 78
 - 4. Intentional Vagueness 79
 - 5. Word Connotation 79

6. Special Word Problems: Made-Up Words, Slang and Colloquial Expressions, and Offensive Language 80
 - a. Made-Up Words and Phrases 80
 - b. Slang and Colloquial Expressions 81
 - c. Offensive Language 82

D. Clarity 84

1. Elegant Variation or the Slender Yellow Fruit Syndrome 86
2. Negatives 87
3. Word Order 89

E. Readability 90

1. Prefer the Active Voice 91
2. Use Lists 92
3. Use Parallel Structure 94
 - a. Introduction 94
 - b. Coordinating Conjunctions 95
 - c. Correlative Conjunctions 95
 - d. Comparisons 95
 - e. Lists and Headings 96
4. Avoid Nominalizations 97
5. Avoid Legalese 98
 - a. Introduction 98
 - b. Indirect Writing 100
 - c. Pretentious Writing 100
6. Keep Subjects and Verbs Close Together 102
7. Use Forceful Words 103
8. Repeat Strong Words and Phrases 104
9. Vary the Length of Sentences 104
10. Use Effective Transitions 105
11. Avoid Shifts in Tense 106

F. Conciseness 109

1. Introduction 109
2. Omit Needless Words 110
3. Avoid “Throat-Clearing” Introductions 111
4. Avoid Redundancy 112
5. Avoid Repetition 114

Chapter 5. Organization and the Writing Process 115

A. Introduction 116

B. Order and Internal Organization 116

1. Outlines 116
 - a. Brainstorming and Freewriting 116
 - b. Clustering and Tree Diagrams 117

- c. Story Telling 117
- d. Percolating 117
- e. Reverse Outlining 118
- 2. The Paper Chase: Using the Legal Authorities 119
- 3. An Overview of Most Writing Projects 119
 - a. Introductory Section 119
 - b. Middle Sections and Paragraphs 120
 - c. Conclusions 121
- 4. Using Position and Voice for Emphasis 121
 - a. Start and End Strong 122
 - b. Bury Negative Information 122
 - c. Use Passive Voice 122
 - d. Avoid Forceful Language 122
- 5. Avoid Micro-Editing During the Drafting Stage 123

C. Methods of Writing 123

- 1. Writing by Hand 123
- 2. Dictating 124
- 3. Using a Word Processor 124

Section Three ■ Legal Documents, Legal Conventions, and Common Legal Writing Blunders 127

Chapter 6. Legal Correspondence 129

A. The Elements of a Letter 130

- 1. Introduction 130
 - a. Letterhead 130
 - b. Date 130
 - c. Special Notations 130
 - d. Inside Address 130
 - e. Reference or Subject Notation 131
 - f. Salutation 131
 - g. Body 132
 - h. Closing and Signature Block 132
 - i. Reference Initials, Enclosures, and Copies 133
- 2. Format Considerations 134
 - a. Size of Paper and Spacing 134
 - b. Arrangement and Indenting 135
 - c. Margins and Justification 135
 - d. Widows and Orphans 135
 - e. Font and Typeface 135

B. The Audience and Tone for Legal Correspondence 136

1. Who Will Be Reading This Letter? 136
2. What Is the Purpose of This Letter? 137

C. Types of Letters 137

1. General Correspondence 137
2. Demand Letters 138
 - a. Elements of Demand Letters 139
 - b. Some Common Pitfalls in Demand Letters 139
3. Opinion Letters and Their Elements 142
 - a. Date 143
 - b. Introductory Language 143
 - c. Review of Facts 143
 - d. Opinion 144
 - e. Explanation of Opinion 145
 - f. Recommendations 145
 - g. Instructions 145
 - h. Protection Clauses 145
4. Electronic Communications 149
 - a. Communicating by Email 149
 - b. Communicating by Facsimile 150
 - c. Communicating by Telephone and Voice Mail 151
 - d. Communicating by Text Messaging 152

Chapter 7. Legal Memoranda 153**A. Introduction 154**

1. Be Objective 154
2. Be Specific 154
3. Be Thorough 154

B. Format of Memoranda 154

1. Heading 155
2. Question(s) Presented 155
3. Brief Answer(s) 156
4. Statement of Facts 156
5. Analysis or Discussion 156
6. Conclusion 160

Chapter 8. Legal Briefs 169**A. Introduction 170****B. Tips for Writing Briefs 170**

1. Be Persuasive 170
2. Be Honest 171
3. Know the Rules 171

C. Trial Court Briefs 172

1. Introduction 172
2. Elements of a Trial Court Brief 172
 - a. Caption 172
 - b. Introductory Statement 172
 - c. Statement of Facts 173
 - d. Argument 173
 - e. Conclusion 174
 - f. Signature and Date 174
 - g. Certificates of Service and Compliance 174
 - h. Exhibits 174
 - i. Order 174

D. Appellate Briefs 174

1. Introduction 174
2. Elements of Appellate Briefs 175
 - a. Cover Sheet 175
 - b. Identification of Parties 175
 - c. Table of Contents 175
 - d. Table of Authorities 175
 - e. Jurisdictional Statement 176
 - f. Constitutional and Statutory Provisions 176
 - g. Question(s) Presented 176
 - h. Statement of the Case 176
 - i. Summary of the Argument 177
 - j. Argument 177
 - k. Conclusion 177
 - l. Signature 177
 - m. Certificates of Service and Compliance 177
 - n. Appendix 177

Chapter 9. Pleadings and Transactional Documents 187**A. Pleadings 188**

1. Introduction 188
2. Format of Pleadings 188
3. Using Form Books 189
4. Legalese 192

B. Transactional Documents 193

1. Introduction 193
2. Drafting Considerations 193
3. Elements of Transactional Documents 194
 - a. Introductory Matter 194
 - b. Recitals 194

- c. Consideration 195
- d. Operative Terms 195
- e. Standard Provisions 195
- f. Signatures 195
- 4. Using Form Books 195

Chapter 10. Legal Conventions and Legal Writing Blunders 205

A. Legal Conventions 206

- 1. Defined Terms 206
- 2. Repetitive Terms 206
- 3. Labels 206
- 4. *Including But Not Limited to* Phrases 207
- 5. Money Amounts 207
- 6. Numbers 207
- 7. Initial Phrases 207
- 8. The *Whether* Clause 207
- 9. d/b/a References 207
- 10. Law Firm Names 208
- 11. Ordinals 208
- 12. Pagination 208

B. Common Legal Writing Blunders 208

- 1. Labels and Numbering 208
- 2. Defined Terms 208
- 3. Supporting Authorities 209
- 4. Conclusory Language 210
- 5. Including Facts 210
- 6. Other Legal Authorities 210
- 7. Tone in Court Documents 210
- 8. Title Headings in Statutes 210
- 9. Complete Discussion 210
- 10. Concurring and Dissenting Opinions 211
- 11. The Complete Package 211
- 12. Use of Headnotes 211
- 13. Addressing Readers 211
- 14. Authors of Court Opinions 212
- 15. New Topics 212
- 16. Citations 212
- 17. Over-Quoting 212
- 18. Mini-Conclusions 212
- 19. Headings 213
- 20. Use of First Person 213

- 21. Use of Party Names 213
- 22. Tense 213
- 23. Writing *This Case* 214
- 24. Abbreviations 214
- 25. Collective Nouns 214
- 26. Cross-References 214
- 27. The Biggest Blunder—Violating Court Rules 214

Section Four ■ Postwriting Steps and Document Design 215

Chapter 11. Postwriting Steps 217

A. Introduction 218

B. Proofreading Stage One: Reviewing for Content and Meaning 219

C. Proofreading Stage Two: Reviewing for Technical Errors 220

- 1. The Effect of Technical Errors 220
- 2. Using a Style Sheet 220
- 3. The Limitations of Spell-Checkers 220
- 4. Techniques to Slow Down 220
- 5. Asking for Help 222
- 6. Using Templates and Forms 222
- 7. Using Technology to Help with Proofreading 222

D. Proofreading for Others 223

E. Proofreaders' Marks 223

F. The Final Run-Through 225

Chapter 12. Document Design 227

A. Principles of Document Design 228

- 1. Introduction 228
- 2. Paper 228
- 3. Typeface 228
 - a. Typeface or Font Style 228
 - b. Mixing Typefaces 229
 - c. Roman Typeface 229
 - d. Proportional or Monospace Typeface 229
 - e. Size of Typeface 229

B. Formatting and Layout 230

- 1. White Space and Margins 230
- 2. Justification 230
- 3. Spacing 231

- 4. Document Length 231
- 5. Headings 232
 - a. Placement 233
 - b. Phrasing 233
 - c. Emphasis 233
 - d. Lists 233
- 6. Visuals 234

Appendix A. Citation Form 235

Appendix B. English as a Second Language 249

Appendix C. Sample Appellate Court Brief 259

Appendix D. Answer Keys to Challenges 279

Appendix E. Glossary of Terms 297

Appendix F. Glossary of Usage 303

Appendix G. Sample Case Brief 317

Index 319