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## Discretionary Punctuation Should Achieve Clarity and Flow

By Kenneth F. Oettle

An associate asked me whether she should use a comma after the next-to-last item in a series — the one before the “and” or the “or.” She said she leaves the comma out, but others put it in, and this bothers her because she believes everyone should do it the same way. She says that legal writers have enough choices without commas adding to the uncertainty.

### MAKING YOUR POINT



A Guide to Persuasive Writing

I told her that omitting the comma after the next-to-last item in a series is optional unless the comma is needed for clarity. I said she can use whichever convention she prefers as long as she is consistent.

Freedom to choose didn't satisfy the associate, who still felt that everyone should follow the same rule.

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In grade school, I was taught that a comma is required after the next-to-last item in a series, as in the following:

The court dismissed the first, second, and third counts of the complaint.

As a lawyer, I bowed to and finally embraced what seems to be the dominant practice in legal writing — not to use a comma after the next-to-last item in a series.

Usually, that comma is not needed for comprehension. Because of the initial items in the series and the comma or commas between them, the reader already knows that a series is being presented. The words “and” or “or” signify that the series is about to end.

The extra comma will only slow the reader down.

In the above example, the pacing with the extra comma is as follows: “The court dismissed the first (pause) second (pause) and third counts of the complaint.” Without the last comma, the pacing is faster: “The court dismissed the first (pause) second-and-third counts of the complaint.”

Generally, the pace of legal writing should be brisk though not breakneck. Some lawyers eschew nearly all commas to create the illusion, I suspect, of being breathless with the importance of what they have to say or to cause readers to move so rapidly through the argument that they overlook its flaws.

Readers know that writers do this — omit commas to create the illusion of power — but I don't think the distrust thereby developed for comma-less prose will carry over to the omission of the last comma in a series. That

comma is only a small element in a larger scheme.

As long as clarity is unaffected, consider omitting that comma. It increases the pace and will rarely confuse. Just be consistent. Don't give voice to your ambivalence by arbitrarily using the comma sometimes and not other times so that both sides of your ambivalence are represented.

### Sometimes You Need The Last Comma

You may wish to use the extra comma for clarity in a series such as the following:

The complaint alleged tortious interference with prospective economic advantage, intentional infliction of emotional distress and defamation.

Without the comma after “distress,” a reader could read “intentional infliction of defamation,” which makes just enough sense to cause momentary confusion.

Similarly, a comma after “case” in the following sentence precludes the reader's seeing “dismissal of default judgment”:

Sanctions can include monetary fine, dismissal of case or default judgment.

Another good spot for a comma before the conjunction would be after “accuracy” in the following:

E-records are created to promote information functionality, not

trustworthiness, accuracy or evidential significance.

This sentence followed a statement that paper documents usually say why they were created, whereas electronic documents do not. The concept of trustworthiness is so strong as a counterpoint to functionality that the reader may deem the thought concluded right there and may think, initially, that “accuracy or evidential significance” begins a new thought.

But it doesn’t, which means the reader will be taken aback. In contrast, if a comma follows “accuracy,” the reader’s eye will catch it, and the reader will suspend closure.

Conventions of punctuation should serve your rhetorical (persuasive) purposes. They should guide the reader, or they should appeal to the reader’s aesthetic sense. If a comma assists those purposes, then use it. If not, then don’t.

I know that good authorities, including Strunk and White, recommend using a comma after the next-to-last item in a series. I doubt that most readers notice the absence of these commas unless it makes the reading difficult.

Omitting the extra comma as a general rule but including it for clarity takes extra effort because you have to make a decision for each series. Sometimes, reasonable minds can differ, and you may not make the best choice.

Nevertheless, if you are comfortable with this challenge, I suggest you

accept it. You won’t have many hard choices, and the process will have a secondary benefit. Each time you ask yourself how the reader will perceive a sentence, you will reinforce the reader-centric mindset necessary for successful writing.

Of course, if dropping a comma would violate a hallowed rule of punctuation and could offend or confuse readers, then you must follow the rule. For example, if you are connecting independent clauses with “and,” you must use a comma. Otherwise you will have a run-on sentence, as in the following:

They moved for summary judgment on all counts and in the alternative they moved for bifurcation of the trial.

A reader trained in the use of punctuation — as most judges are — may notice the improper omission of the comma after “counts” and may subconsciously conclude that if your punctuation is substandard, then your argument is substandard as well. Justified or not, this can undermine your credibility as an advocate.

This is a truth that persons who refuse to take punctuation seriously seem not to understand. Bad punctuation sends a message, albeit subliminal. At a minimum, it suggests you don’t care enough to attend to detail. Though incorrect punctuation has nothing to do with the merits of your case, it sends the wrong message about your com-

mitment and capacity to think things through.

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### ***Puzzler***

How would you tighten and sharpen the following sentences?

The plaintiff made two separate charges in her court case against defendant alleging racial and sexual discrimination. However, the sexual discrimination charge was the only one filed with the EEOC.

Your initial reaction may be to place a semi-colon after “discrimination” because one should not begin a sentence with “however.” Instead, just eliminate the however and make one sentence by beginning with “Though,” which ties the second part of the message to the first by signaling a change of direction from the outset.

The rearrangement also keeps the subjects parallel (“plaintiff” and “she”). You would lose rhythm and momentum by switching subjects in successive clauses. The phrase “against defendant” is implicit and can be dropped.

The revised version:

Though the plaintiff alleged both racial and sexual discrimination in her court case, she filed only the sexual discrimination charge with the EEOC. ■