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Take Control of Statutes by Summarizing Them

You may need to offload much of what the legislators lump in

By Kenneth Oettle

For the most part, statutes do not even purport to be easy reading. Legislators just load in the material and hope that nothing gets left out. For the convenience of your readers, you almost always need to summarize statutes.

Consider the following statutory bar to high-level government officials owning or working for gaming entities during their tenure in office and for two years thereafter. The example is a composite, but it is representative:

No executive-level state employee, head of a principal department, head of an independent state agency or member of the legislature, or their immediate family members, shall have, at or following the effective date of this Act, a financial interest in or be employed, directly or indirectly, by any Licensed Gaming Entity, Licensed Casino Gaming Entity, applicant for such licenses, or any holding, affiliate, intermediary or subsidiary company thereof, during his or her status as an executive-level state employee, head of a principal department, head of an indepen-

dent state agency or member of the legislature and for two (2) years following termination of such status.

Suppose your job is to summarize this long-winded statute for a memo or a brief. The approach is straightforward. First determine what you need and what you don't need; then group the elements and place them in proper order.



MAKING
YOUR
POINT

A Guide to Persuasive Writing

As the statute must, it names all the persons to whom it applies. Unless you are focusing on a particular type of public official, you don't need to present the entire list, just a category that encompasses all persons on the list. Here, the phrase "high-level public official" can include executive-level state employees, heads of principal departments, heads of independent state agencies and members of the legislature.

You can drop the reference to the effective date of the act because a reader will assume the stricture takes effect when the act takes effect unless you state otherwise. You can also drop the

reference to "direct or indirect" employment by a gaming licensee unless you have an issue regarding indirect employment. Similarly, you won't need the reference to "applicants," meaning entities that have sought but haven't received licenses, unless you have an issue involving an applicant.

The statute refers to two classes of gaming entities — "Licensed Gaming Entities" and "Licensed Casino Gaming Entities." Again, unless you have an issue that requires you to call attention to either of those two classes, just use a category that covers both ("gaming entities"). The same reasoning applies to the list of related entities — holding, affiliate, intermediary and subsidiary companies. They are all "affiliates."

The statute concludes by setting forth the period for which public officials are restricted — two years. In typical statutory fashion, it repeats the full list of persons covered. You can skip the repetition. Just refer to the relevant period.

The elements of the statute can be grouped as follows:

- high-level public officials and their immediate family members
- financial interest or employment
- gaming entities and their affiliates
- during employment and for two years thereafter

Once the groups are outlined, the summary almost writes itself. Try it.

Whether you begin with "High-level public officials are barred" or with

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“While in office and for two years thereafter” may depend on your transitional needs, and it may depend on whether you wish to assign the position of emphasis at the beginning of the sentence to the fact of the bar or its duration. The summary might read, for example:

High-level public officials and their immediate family members are barred from holding an interest in or working for gaming entities and their affiliates while in office and for two years thereafter.

In the alternative:

While in office and for two years thereafter, high-level public officials and immediate family members are barred from holding an interest in or working for gaming entities and their affiliates.

If your focus is one category of public official, such as heads of state agencies, you can follow the above sentences with something like:

Heads of state agencies are covered by the bar.

In the alternative, you could build the reference to heads of state agencies right into your master sentence:

Heads of state agencies and their immediate family members are barred ...

In the above sentences, we substituted a word that is more vigorous than “employment” but conveys the same concept — “working” — and we substituted “while in office” for “during his or her status as...,” thus saving words, dropping the awkward “his or her,” and avoiding the rank-order connotations of “status.”

To write well, you must take control of your material. To take control of a statutory summary, decide what to keep and what to cull; how to group what remains; and how to achieve precision and flow. In short, pull the statute apart, strip and group its elements and put them back together, all with a view to making the reader’s job easier and getting your point across.

Puzzler

How would you tighten and sharpen the following sentence?

The way in which the level playing field was tilted is

through the agency’s making findings that didn’t have any support in the record.

Eliminate “The way in which ... is” and then decide whether to stay with “the playing field was tilted” or go to “the agency tilted the playing field.” Unless you badly need the playing field to be the subject, as for transitional purposes, use the active construction.

Shorten the sentence further by dropping “level,” which is implicit. “That didn’t have any” can be dropped or replaced by “without,” depending on how the concept of support in the record is handled.

“Record support” is shorter than support in the record, but “record” carries the unwanted connotation of the superlative, as in “record rainfall” and “record performance.” Even better may be “unsupported findings.”

The revised version:

The agency tilted the playing field by making findings without support in the record.

Alternate version:

The agency tilted the playing field by making unsupported findings. ■