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## Brief Writing Requires a Formal Style

A casual tone may suggest you don't take your case seriously

By Kenneth F. Oettle

**B**rief writing is more formal than conversation. You may say to a colleague that banking regulators are “super sensitive” to issues of integrity because the industry handles so much money, but in a brief, you would not write “super sensitive.” If you used any intensifier, you would write that banking regulators are “very” or “extremely” (not “super”) sensitive to issues of integrity.

“Super” is too casual. It presumes an intimacy you haven't earned, which may offend the reader. The familiar tone may also suggest you aren't taking your advocacy seriously, which in turn may suggest that the righteousness of your cause isn't manifest enough for you to feel comfortable being formal and indignant. If you can be casual in the face of the wrong done to your client, how serious a wrong could it be?

At bottom, if you don't seem moved by the gravity of your client's situation, then you can't expect the reader to be moved.

Does all this flow from one word or phrase? Perhaps. A colloquial expression stands out like a pimple in the formal context of a brief. It marks you as a rebel, a novice or a narcissist because the reader senses that only rebels,

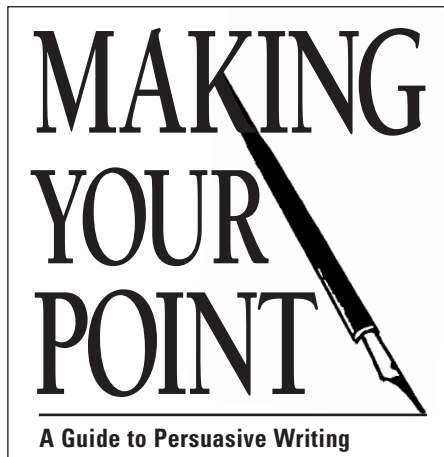
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*The author is a partner and co-chair of the writing and mentor programs at Sills Cummis Epstein & Gross. He invites questions and suggestions for future columns to [koettle@sillscummis.com](mailto:koettle@sillscummis.com). “Making Your Point” appears every other week.*

novices and narcissists speak colloquially in briefs, whether from anger, ignorance or self-absorption. Once you are marked, your credibility as an advocate suffers.

But you protest! You feel constricted. You want to add your personal mark to the brief. Surely, after all the effort you put in, you are entitled to one word that reflects your innate creative spark!

Don't do it. Make your mark the



old fashioned way — with good facts and good law.

### Show Respect for the Court

Avoiding the colloquial is especially important when referring to the actions or attitudes of a judicial or administrative body. Don't write that a court was “feeling its oats” or that a planning board was “hot” for a developer. The casual tone would show disrespect, not only for the court or the administrative body but for the legal system itself.

That brief writers are expected to

show great deference to courts and agencies by using an elevated level of prose surprises some newer lawyers. As one member of my informal polling group puts it, “In an age where formality in ordinary life has vanished beyond recall, younger lawyers are unprepared for the dignity with which courts expect to be treated.”

One small caveat: The need for a formal tone does not mean you should load your briefs with Latinate mammoths like “commence” instead of begin or arcane legalisms like *vel non*. The pompous is not an antidote for the irreverent.

### Cuteness Is Also Taboo

Just as you shouldn't be colloquial, you shouldn't be cute, as in the following:

ABC Telephone is not subject to personal jurisdiction in New York because it provides local telephone service and directory service only in seven western states, none of which, needless to say, is in New York.

As the writer conceded with “needless to say,” the comment that seven western states weren't in New York is unnecessary. Worse, it is counterproductive because it shows the writer's inexperience and self-absorption. It suggests the writer isn't taking the matter seriously, being more focused on comedy than on his case. If his case isn't worth his full attention, how good can it be?

The flip comment about the western states also suggests that the writer thinks the reader may actually be stu-

pid enough not to deduce — without help — that the telephone company provides no service in New York. That will doubly irritate the reader, not only insulting the reader's intelligence but also, by reason of the unnecessary explanation, wasting the reader's time.

By being colloquial or cute, writers go off message, and their readers may lose sight of the point. The writers are trying to persuade, but their judgment is poor. They can't get past their anger, naiveté or self-absorption to see the consequences of their ill-chosen words.

### Using the Colloquial as a Hook

Members of my informal polling group caution that colloquialisms and clichés can serve a positive role, catching the reader's attention at the beginning of a brief, encapsulating a theme, much as a trial lawyer would use homespun phrases to grab the jury's attention and help them organize and process information.

Fair enough. Using casual or even tired language to capture the reader's attention can work. For example, a plaintiff might contend that a defen-

dant "should have used elbow grease rather than trying to elbow his way to the top." "Elbow grease" is colloquial and possibly a cliché, but it juxtaposes nicely with "elbow his way to the top."

Nevertheless, as a general rule, keep a low profile to preserve the flow. Don't call attention to your prose.

## Puzzler

How would you tighten and sharpen the following sentence?

Under state law, there is no annual limit on the amount of contributions an individual may make to a state party committee.

Convert from passive to active by substituting "State law imposes" for "Under state law, there is." Drop "amount of" because the concept of amount is implicit in the word "limit." "By" is shorter than "may make."

I prefer "no annual limit on contributions" to "no annual contribution limit." Though the latter is one word shorter, it leaves the reader momentarily wondering why a phrase that appears to convey a negative ("no annual contribution") is used in a sentence stating a positive — that contributions are not limited.

Retain the phrase "an individual" to distinguish individual contributors from corporate contributors, which may have different contribution limits or may not be permitted to contribute at all.

The new version:

State law imposes no annual limit on contributions by an individual to a state party committee.

You may wish to eliminate the prepositional phrase "by an individual."

Alternate version:

State law imposes no annual limit on an individual's contributions to a state party committee.

Some writers prefer "does not impose" to "imposes no" because the word "impose" momentarily imparts a restrictive connotation to a permissive message.

Alternate version:

State law does not impose an annual limit on an individual's contributions to a state party committee. ■