On Beginning a Court Paper

By Beverly Ray Burlingame

Another of our memorable columns from the past 30 years. This one is reprinted from November 2003. —JK

The selection of the starting words should always make the audience want to hear more.[1]

Start in the very first sentence with the problem in this case. Put it right up front.... Don't bury it under a lot of verbiage and preliminaries.[2]

In drafting court papers, litigators routinely waste their openers by repeating, more or less verbatim, the very words of the title, which often consists of four or more lines of verbosity. This peculiar habit has led Kevin McDonald, a Washington, D.C. lawyer, to coin the phrase "hence the title"—the remark that a judge might make after slogging through an opening like this one, in a paper filed by a hypothetical company named Belcom:

PLAINTIFF BELCOM COMPUTER COMPANY, INC.'S OPPOSITION TO DEFENDANT WORLDWIDE TELCO, INC.'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STRIKE PLEADINGS BASED ON PLAINTIFF'S VIOLATION OF THIS COURT'S JUNE 13, 2003 ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES PLAINTIFF BELCOM COMPUTER COMPANY, INC. ("Belcom"), and files this its Opposition to Defendant Worldwide Telco, Inc.'s ("Worldwide's") Motion to Dismiss or, in the Alternative, to Strike Pleadings Based on Plaintiff's Violation of This Court's June 13, 2003 Order ("Worldwide's Motion to Dismiss"), and for its Opposition, Belcom would respectfully show unto this Honorable Court as follows:

[97 words]

This opening plainly does not make the judge want to hear more. Even worse, Belcom's lawyers have now reminded the judge—twice—that Belcom is accused of violating a court order. And they've done nothing to dispel that notion. What's more, the judge knows nothing at all about Belcom's position.

Most judges probably skim over such inane chunks of introductory text. But if a judge paused to consider such an opener, the only conceivable response might be: "Oh, I get it. That's why you used that title up above! Thank you for telling me that this isn't a falsely labeled court paper!"[3]

By devoting the entire opening paragraph to restating the needlessly long title, lawyers waste judges' time and sacrifice a valuable chance for persuasion.

Compare that opening to this alternative one:

BELCOM'S OPPOSITION TO WORLDWIDE'S MOTION TO DISMISS OR STRIKE

Belcom has fully complied with this Court's June 13, 2003 order to amend its complaint. As the order requires, Belcom's amended complaint states specific facts supporting its contention that Worldwide deceived the patent office in applying for the patent at issue, thus rendering the patent invalid. Instead of disputing those facts, Worldwide now seeks drastic relief—asking this Court to dismiss or strike Belcom's invalidity claim. Worldwide's motion should be denied.

[80 words]

"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. To contribute an article, contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For an index of past columns, visit http://www.michbar.org/generalinfo/plainenglish/.

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This beginning is better, both in substance and in style, because it:

- Doesn't repeat Worldwide's contention that Belcom has violated a court order.
- Notes the limited scope of the order and argues that Belcom has complied with it.
- States Belcom's contention that Worldwide deceived the patent office (suggesting that Worldwide has a strong incentive to get this claim dismissed).
- Explains why Belcom opposes the motion.
- Points out the drastic nature of the relief sought.
- Is shorter and easier to read.
- Doesn't merely parrot the title.
- Eliminates legalese—including *Now Comes* and *Said Court*.
- Abandons the formulaic practice of defining short forms for papers and names. (In a response to a single motion in a two-party case, no one will be confused by references to *this motion*, *Belcom*, and *Worldwide*.)
- Changes all-capital text to small caps (for the title) and ordinary text (for the rest), thus making the paper more readable.
- Gets rid of underlining, which takes up valuable white space and makes prose ugly and unreadable.

Most litigators can rattle off a hence-the-title opening for any paper, even before they have an inkling of their position. That fact alone reveals that such an opening can't possibly advance a client's cause. And common sense isn't the only reason to swear off the hence-the-title principle and other forms of legalese: most judges prefer plain language.[4]

By replacing formulaic openers with forceful arguments, lawyers can capture the judge's attention, enhance their credibility, and show from the outset why their client should win. ■

Reprinted from Volume 6 of The Scribes Journal of Legal Writing. *For more about Scribes—The American Society of Legal Writers, visit www.scribes.org.*

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ENDNOTES

1. McQuain, *Power Language: Getting The Most Out of Your Words*, 109 (1996).
2. Hecht, Supreme Court of Texas (as quoted in Garner, *Judges on Effective Writing: The Importance of Plain Language*, 73 Mich B J 326, 326 (1994)).
3. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts*, 291 (1999).
4. See Kimble and Prokop Jr., *Strike Three for Legalese*, 69 Mich B J 418 (1990) (reviewing the results of a survey done in three states); *State Bar Committee Attacks Legaldegook*, 54 Tex B J 921, 932 (1991) (reviewing the same study in Texas).