The 20 Most Common Sentence-Level Faults Among Legal Writers

By Bryan A. Garner

O ccasionally I’ll hear a silly, naive person ask why lawyers must have instruction in writing. The answer, of course, is that anyone who poses such a question is almost certainly unaware of his or her own ineptitude. There’s writing in the sense of literacy (can you write your name?), and then there’s real writing. It’s no different from any other skill. You can bowl regularly and have an average score of 80. But I can’t imagine complacency with such a record—if bowling is something you care about.

Let me take that back: I can imagine complacency with such a record because there are many, many legal writers whose skills correspond to those of a bowler who typically scores 80. And these legal writers are often quite self-satisfied. It’s as if they think that 85 is the highest possible score because no one has told them that it goes all the way up to a perfect game of 300.

The sentence-level faults among these unconsciously bungling writers are predictable. Here are the top 20. If you can remember and identify these faults, you’ll become a more effective writer and self-editor. Each correction is keyed to Garner’s Modern American Usage (Oxford University Press, 3d ed. 2009) for a full explanation of the point. Read the faulty version of the sentence carefully, trying to spot the problem (usually italicized) and think about why it’s a problem, before looking at the corrected version.

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1. **Subject-Verb Disagreement.** Faulty: Set forth below is a summary and an analysis of the caselaw concerning anticipation and obviousness of these patent claims. Correct: are. (See GMAU at 178–79, 777–80.)

2. **Unjustified Passive Voice.** Faulty: The election law provides that a proceeding may be instituted by a candidate or voter to contest the casting or canvassing of challenged ballots. Correct: The election law allows a candidate or voter to contest [etc.]. (See GMAU at 612–13.)

3. **Overcapitalization.** Faulty: Appellant has not shown that either the Trial Court or the Appellate Court grossly departed from proper judicial procedure. Correct: Make the initial capitals lowercase. (See GMAU at 131.)

4. **Misused Commas.** Faulty: Even if it is assumed, arguendo, that attorney’s fees could be awarded the amount of the fee and other costs, are clearly excessive. Correct: Even if attorney’s fees could be awarded, the amount of the fee and the other costs are clearly excessive. (See GMAU at 76–78.)

5. **Illogic and Unclarity.** Faulty: Another frequently violated statute is exceeding the speed limit, which is unfortunate because of the condition of our highways compared to our modern high-speed automobiles. Correct: Another frequently violated statute is the speed limit, which was enacted in part to minimize damage to our highways—an especially important measure in an age of high-speed automobiles. (See GMAU at 440–41.)

6. **Misplaced Modifiers.** Faulty: Spencer alleges that the medical center discriminated against her because she is black in violation of Title VII. Correct: Spencer alleges that the medical center violated Title VII of the Civil Rights Act by discriminating against her because she is black. (See GMAU at 222–23, 440–41, 540.)

7. **Dangling Particless.** Faulty: Even while constraining every possible factual inference in plaintiff’s favor, plaintiff has admitted everything that would justify the court in dismissing the complaint with prejudice. Correct: Even if the court construes every possible factual inference in plaintiff’s favor, plaintiff has admitted everything that would justify the court in dismissing the complaint with prejudice. (See GMAU at 221–23.)

8. **Nonstandard Idioms.** Faulty: In all events, plaintiff’s theory in regards to the share price defies economic reality. Correct: Change in all events to in any event or at all events; change in regards to to in regard to or (better) about. (See GMAU generally.)
9. **Unparallel Phrasings.** Faulty: The patentee must show that the established royalty rate was artificially low because of factors such as widespread infringement, that the patent lacked public recognition, or to avoid patent challenges. Correct: The patentee must show that the established royalty rate was artificially low because of factors such as widespread infringement, the lack of public recognition, or a low profile intended to avoid patent challenges. (See *GMAU* at 607–08.)

10. **Misused Possessives.** Faulty: The Jones’ house is quite spacious. Correct: The Joneses’ house is quite spacious. (See *GMAU* at 644–47.)

11. **Misunderstood Mechanics of Quot ing.** Faulty: The court in that case stated that: “...[W]e do not today decide the constitutional question arguably at issue.” Correct: The court in that case stated: “[W]e do not today decide the constitutional question arguably at issue.” (See *GMAU* at 680–81, 688–70.)

12. **Redundancy.** Faulty: Typically, a TIF statute authorizes the governing body to adopt a redevelopment plan for an area providing for the means by which a designated area will be redeveloped. Correct: Typically, a TIF statute authorizes the governing body to adopt a plan to redevelop a designated area. (See *GMAU* at 700–02.)

13. **Repetition.** Faulty: Only the parties who signed the participation agreement are bound by the participation agreement, and the participation agreement was signed by only four parties. Correct: Only the parties who signed the participation agreement are bound by it, and only four parties signed it. (See *GMAU* at 761.)

14. **Comma Splices with However.** Faulty: She did not file suit within seven years, however, the statute of limitations was tolled because of the discovery rule. Correct: She did not file suit within seven years; however, the statute of limitations was tolled because of the discovery rule. (Better yet: Although she did not file suit within seven years, the statute of limitations was tolled because of the discovery rule.) (See *GMAU* at 723–24.)

15. **Other Comma Splices.** Faulty: He decided not to testify before the jury, he thought that doing so would open him up to serious impeachment. Correct: He decided not to testify before the jury; he thought that doing so would open him up to serious impeachment. (See *GMAU* at 723–24.)

16. **Unclear Antecedent.** Faulty: The committee’s argument that First Union’s appeal should be denied because it cannot obtain effective relief is contrary to the facts and is without logic. Correct: Although the committee argues that First Union cannot appeal because it cannot obtain effective relief, that argument is both illogical and contrary to the facts. (See *GMAU* at 540–41.)

17. **Misspellings.** Faulty: The *idosyncracies* of legal theory relating to *in personam* jurisdiction require acknowledgment and analysis before they can be considered full-fledged *aberrations*. Correct: The idiosyncrasies of legal theory relating to *in personam* jurisdiction require acknowledgment and analysis before they can be considered full-fledged *aberrations*. (See *GMAU* at 763–65.)

18. **Subject-Verb Separation.** Faulty: Plaintiffs’ contention that they are asserting a cause of action for unjust enrichment for which punitive damages are available is suspect. Correct: Although Plaintiffs contend that they are asserting a claim for unjust enrichment for which punitive damages are available, that contention is suspect. (See *GMAU* at 777–81.)

19. **Tense Shifts.** Faulty: He said that he feels angry at the contractor. Correct: He said that he felt angry at the contractor. (See *GMAU* at 801–03.)

20. **Erroneous Words.** Faulty: If she *bad’ve* told the patient to lay on her back, the patient might not have had that serious *of* an injury. Correct: If she had told the patient to lie on her back, the patient might not have had so serious an injury. (See *GMAU* generally.)

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