

# The 20 most common sentence-level faults among legal writers

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*One from the archives.* —JK

Occasionally 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 their 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 English Usage* (Oxford University Press, 5th ed. 2022) 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.

**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 *GMEU* at 238–39, 1044–47.)

**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 *GMEU* at 807–08.)

**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 *GMEU* at 179.)

**4. Misused commas.** Faulty: Even if it is assumed, *arguendo*, that attorney's fees could be awarded the amount of fee and other costs, are clearly excessive. Correct: Even if attorney's fees could be awarded, the fee amount and the other costs are clearly excessive. (See *GMEU* at 897–99.)

**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 *GMEU* at 569–71.)

**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 *GMEU* at 291–92, 570, 712.)

- 7. Dangling participles.** Faulty: Even *while construing* 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's dismissing the complaint with prejudice. (See *GMEU* at 290–92.)
- 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 *GMEU* 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 a factor such as *widespread infringement*, *the lack of public recognition*, or *a low profile intended to avoid patent challenges*. (See *GMEU* at 801–02.)
- 10. Misused possessives.** Faulty: The Jones' house is quite spacious. Correct: The Joneses' house is quite spacious. (See *GMEU* at 854–57.)
- 11. Misunderstood mechanics of quoting.** 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.” (Or: The court in that case stated that “we do not today decide the constitutional question arguably at issue.”) (See *GMEU* at 902, 912–14.)
- 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 *GMEU* at 932–33.)
- 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 *GMEU* at 1020.)
- 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 *GMEU* at 962–63.)
- 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 *GMEU* at 962–63.)
- 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 *GMEU* at 712–13.)
- 17. Misspellings.** Faulty: The *idiosyncracies* of legal theory relating to *in personum* jurisdiction require acknowledgment and analysis before they can be considered full-fledged *abberations*. Correct: The idiosyncrasies of legal theory relating to *in personam* jurisdiction require acknowledgment and analysis before they can be considered full-fledged aberrations. (See *GMEU* at 1024–26.)
- 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 *GMEU* at 1047.)
- 19. Tense shifts.** Faulty: He said that he feels angry at the contractor. Correct: He said that he felt angry at the contractor. (See *GMEU* at 1080–82.)
- 20. Erroneous words.** Faulty: If she *had'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 *GMEU* generally.)

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