

# The 20 Most Common Sentence-Level Faults Among Legal Writers

By Bryan A. Garner

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 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.

If you can remember and identify these faults, you'll become a more effective writer and self-editor.

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 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 Unclearity.** 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 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 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.)

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- 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 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." (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 *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 *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 *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 *GMAU* generally.) ■

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