

Writing for Your Audience: The Client

We all write letters to non-lawyer clients at some time. Yet what we write is often poorly targeted to that audience. A partner in a prestigious law firm recently told me that he is “appalled” at the writing style of letters that his colleagues send to clients: the tone and style are too stuffy and legalistic.

As lawyers, we need to be aware that when we write to clients, we face a dramatic shift in audience. In this article I address three typical characteristics of legal language that appear too often in client letters: legalisms, legal citation, and overformality. I’ll paraphrase George Bernard Shaw (who used *literature* and *literary* where I’m using *law* and *legal*):

*In law the ambition of a novice is to acquire the legal language; the struggle of the adept is to get rid of it.*¹

Avoid Using Legalisms

Legalisms are “the circumlocutions, formal words, and archaisms that characterize lawyers’ speech and writing.”² They are the distinctive characteristics of traditional legal-writing style.

But you ought to banish them from client letters. Simply put, do not use traditional legal writing style when writing to clients. Try *not* to sound like a lawyer. That’s a challenge because legalisms abound in what lawyers read and in what they normally write. Many lawyers will continue to use legalistic words and phrases when writing to clients, primarily for two reasons.

First, some lawyers use legalisms to impress or intimidate the client. Under this theory, the client who is baffled by the language is the client who needs the lawyer. I say im-

press the client with your knowledge of the law, with your ability to get favorable results, and with your hard work.

Second, some lawyers use legalisms out of habit or reflex. Sometimes lawyers forget what they didn’t know. That happens to teachers all the time. You teach the concept from the perspective of one with 10 or 20 years’ experience, forgetting that your audience has no experience. But skilled teachers—and practitioners—adapt their writing to the audience.

Here is an example of how it can be done.

Examples of Legalisms

Read this excerpt from a practitioner’s letter to a new client. Typical legalisms are highlighted.

Dear Mr. Wilkins:

*Enclosed please find the retainer agreement. Please sign and return **same** at your earliest convenience.*

***Pursuant to** our conversation of December 20, 2001, I have conducted legal research on the question as to whether your arbitration claim was timely under the Texas Seed Arbitration Act. *Tex. Agric. Code Ann. § 64.006(a)* (Vernon 2001) (the “Act”). According to Texas **common law** construing the Act, the court would apply the plain-meaning **canon of construction**, Fitzgerald v. Advanced Spine*

*Fixation Systems, Inc., 996 S.W.2d 864, 865 (Tex. 1999), and should hold that **said** claim was timely.*

*Unfortunately, this conclusion is not guaranteed and is subject to certain qualifications discussed **herein**. See, e.g., Continental Cas. Ins. Co. v. Functional Restoration Assocs., 19 S.W.3d 393, 399 (Tex. 2000).*

These boldface terms are almost exclusively “legal”; that is, only lawyers use them. These words and phrases fall into different categories: *same*, *pursuant to*, *said*, and *herein* are commonly used by lawyers, but do not have unique legal meanings; *common law* and *canon of construction* have specialized legal meanings. But you can replace all of them with common terms:

Instead of	Write
same	it, the agreement
Pursuant to	As discussed in, As we agreed
common law	court cases, judicial decisions
canon of construction	rule, method of interpreting statutes
said	the, your
herein	here, in this letter

By removing the legalisms, you make the text easier for the client to understand, and you avoid sounding pompous.

Limit Formal Legal Citations or Simplify Them Greatly

The example letter I excerpted contains three legal citations. All three use correct form.³ All three direct the reader to the proper authority. All three state the proposition they are cited for. So what’s the problem?

First, they clutter up the text. Legal readers are used to citations and, frankly, are apt to skip over them. But to the uninitiated, they are large road humps. They’re too long to be ignored, and yet they are not textual

¹“Plain Language” is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Bar Journal Advisory Board’s Plain English Committee. The assistant editor is George Hathaway. The committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901. For information about the Plain English Committee, see our website—www.michbar.org/committees/penglish/pengcom.html.

sentences, so readers must slow down and try to figure them out. Good client writing doesn't ask the reader to slow down and figure things out.

Second, they contain specialized information that most clients won't understand. In particular, the volume-reporter-page portion of the citation can be baffling: 996 S.W.2d 864. Certainly that means nothing to the nonlawyer client.

Third, citation signals must certainly seem strange to the client. What is *See, e.g.*? Signals are a perfect example of something that

has a specialized legal meaning. Their meaning is not intuitive, but is specially defined in citation manuals. We should not expect our clients to consult a citation manual.

So rather than lard your client letters with legal citations, choose from these options:

Option 1

Omit citation to legal authority altogether. Ask yourself these questions: How important is it for my client to know the citation to the Texas Agriculture Code? Can't I just say *Texas law* or *Texas statutes*? Does my client need to

know that the case I am relying on is *Fitzgerald v. Advanced Spine Fixation Systems, Inc.*, that it is found in volume 996 of the South Western Reporter, Second Series, page 864, and that it was decided by the Texas Supreme Court in 1999? (Besides, is my client going to know what the South Western Reporter, Second Series is? Or that it's abbreviated S.W.2d?)

Completely omitting the citations in client letters really cleans up the text and makes the document much more readable. But some lawyers will not want to go that



far. And in some situations, you *do* want the client to know the names and sources of the authority.

Option 2

Put the citations in footnotes. This technique has much the same effect as omitting the citations because now the long, baffling road humps are gone, and the client can read the text smoothly. Most clients will treat the footnotes as “legal stuff” and will ignore them, and those who want the bibliographic information can find it in the footnotes. But footnotes are a mixed blessing. Some clients will be annoyed that some information is at the bottom of the page and requires them to nod up and down to take it all in.

Option 3

Use a shortened form of the citation. Rather than list the entire case name and bibliographic information, simply refer to the case in a shorthand way. Leave the details in your memo to the file.

Under Option 3, our letter excerpt might look like this (with the legalisms replaced):

Dear Mr. Wilkins:

Enclosed please find the retainer agreement. Please sign and return it at your earliest convenience.

As we discussed in our conversation of December 20, 2001, I have conducted legal research on the question as to whether your arbitration claim was timely under the Texas Seed Arbitration Act. According to a Texas case called Fitzgerald, the court would apply the plain-meaning rule and should hold that your claim was timely.

Unfortunately, this conclusion is not guaranteed and is subject to certain qualifications discussed in this letter. For example, one qualification arises from a Texas Supreme Court case called Continental Casualty decided in 2000.

Use a Colloquial Tone

By “colloquial,” I do not mean slangy or substandard language. The phrase “colloquial tone” means “a conversational style.”⁴ Of course, we should usually not write to clients in the same way we speak or carry on conversation. That is far too informal and would appear unprofessional. But we *can* write in a

clear, simple, and direct way that avoids pompous, turgid prose.

Ultimately, lawyers should reduce—slightly—the level of formality when writing to clients. What is too formal and what is too informal will often be a matter of taste, but consider a few examples from our revised excerpt. I have highlighted the words and phrases that strike me as unnecessarily formal or stuffy.

Dear Mr. Wilkins:

Enclosed please find the retainer agreement. Please sign and return it **at your earliest convenience**.

*As we discussed in our conversation of December 20, 2001, I have **conducted legal research on the question as to whether** your arbitration claim was timely under the Texas Seed Arbitration Act. According to a Texas case called Fitzgerald, the court would apply the plain-meaning rule and should hold that your claim was timely.*

Unfortunately, this conclusion is not guaranteed and is **subject to certain qualifications** discussed in this letter. For example, one qualification arises from a Texas Supreme Court case called Continental Casualty decided in 2000.

None of these phrases is wrong or bad; they simply elevate the formality unnecessarily. They create a distance between the writer and the reader—a distance you do not want between you and your client.

Here are some possible revisions:

Formal Phrase	Comment
Enclosed please find	This phrase and its sister, <i>Please find enclosed</i> , have been criticized since 1880. ⁵ Try <i>Here is or I have enclosed</i> .
at your earliest convenience	Almost harmless, but stuffy; try <i>as soon as you can</i> or <i>when you can</i> .
conducted legal research	One word, <i>researched</i> , is turned into three.
the question as to whether	A common legal space filler; prefer <i>whether</i> .
Unfortunately	Perfectly correct, but long. Short transition words make your writing easier to read. ⁶ Use <i>But</i> . (And yes, you can start a sentence with <i>But</i> .)

Formal Phrase

subject to certain qualifications

Comment

Highly formal; perhaps we should omit it or revise it in a complete reworking of the sentence.

Suggestion: *there are exceptions*

By avoiding legalisms, limiting citations, and adopting a less formal tone, we now have a shorter, clearer, and more readily understandable letter.

Here is our final revision:

Dear Mr. Wilkins:

Here is the retainer agreement. Please sign and return it as soon as you can.

As we discussed in our conversation of December 20, 2001, I have researched whether your arbitration claim was timely under the Texas Seed Arbitration Act. According to a Texas case called Fitzgerald, the court would apply the plain-meaning rule and should hold that your claim was timely.

But this conclusion is not guaranteed; there are some exceptions, which I discuss in this letter. For example, one exception arises from a Texas Supreme Court case called Continental Casualty decided in 2000. ♦

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FOOTNOTES

1. Quoted in John R. Trimble, *Writing With Style: Conversations on the Art of Writing* 183 (2d ed., Prentice Hall 2000).
2. Bryan A. Garner, *A Dictionary of Modern Legal Usage* 516 (2d ed., Oxford U. Press 1995).
3. Both are correct under either *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass'n et al. eds., 17th ed. 2000) and Association of Legal Writing Directors & Darby Dickerson, *ALWD Citation Manual: A Professional System of Citation* (Aspen L. & Bus. 2000).
4. Garner, *A Dictionary of Modern Legal Usage* at 171.
5. Garner, *A Dictionary of Modern Legal Usage* at 314. See also, Bryan A. Garner, *The Elements of Legal Style* 112 (Oxford U. Press 1991).
6. Garner, *Legal Writing in Plain English* at 50.