

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

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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 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.)

