

# **Advanced Oil and Gas Drafting and Writing Suggestions**

# WHY THESE SLIDES

This course emphasize the art of drafting, which you will need to understand for the assignments that you will be turning in.

My law school career never prepared me for the work that I was asked to do as an attorney. Nobody explained to me how to write contracts, how to send a business letter, how to advise a client about a course of action.

Sadly, in the almost 50 years since I was in law school, law schools still don't teach any of that, so law students, upon graduation and after taking the bar are supposed to mysteriously become endowed with all of those abilities.

New lawyers that came to work for me, unfortunately, missed the mysterious endowment part, so I ended up spending time teaching them the hows of becoming a transactional lawyer.

What follows is compendium of my thoughts which, I hope, will help you in this course, and just might carry over into your future career.

# SOME THOUGHTS

Before we get into the course, there are some thoughts about legal drafting in today's world that you should know.

First of all, legal drafting has moved into the 21st century, and much of what you read in classes (other than this one) are cases, articles, and other writings that are firmly ensconced in the 20th century, or even earlier. In translation: skip the Latin, work on being succinct, and edit. The latter is probably the most important, so find yourself a printer, print out the word "Edit" in a large font, and put it somewhere you can see it as you do your work.

Second, read what you wrote aloud. It is much easier to catch typographical and grammatical errors in that fashion. It also helps if you read it aloud to a non-lawyer - wives, husbands, partners, siblings - all can help. Your dog is probably not a good critic.

# SOME THOUGHTS CONTINUED

Third, run the spell checker. It won't catch things like using "from" for "form," but it will help you spell confusing words like frumious bandersnatch. See above, item second.

Fourth, try to be as consistent as possible: if you use the term mail, facsimile, courier delivery, or electronic mail, the next time, don't say facsimile, courier delivery, mail or email.

As a senior partner that had lots of work come across my desk from young associates, those were the errors that I saw most often. Your employer will probably be much the same type of person.

# HELPFUL PROGRAMS

## PART ONE

There are a number of programs or add-ins that I use everyday, and for much of what I write. I know they are available for Word 365 for PC, and I think they might be available for Macs, but I'm not sure of that.

The following are highlights of the programs I use, but you can check them out on the web. Some of them may offer a free trial, and if so, I'd suggest using it.

PerfectIt4 is a bit difficult to use, since you have to be able to modify your own style sheets, but it is very helpful to check for consistency (e.g., spell out one through ten, following numbers all as integers), words spelled two different ways (judgement [English], judgment [US]), using one type of external style sheet (e.g., AP, NY Times, MLA), limited spell check.

# HELPFUL PROGRAMS

## PART TWO

WordRake is incredibly easy to use. Install it and run it. It helps to turn awkward legalese into more readable English. For example, "prior to" is rendered as "before," "in the event that" becomes "if." It is very fast, and you have the option of either accepting or rejecting any suggestions that are made.

# HELPFUL PROGRAMS

## PART THREE

Other helpful programs that I use:

Payne Group, Numbering Assistant. This is invaluable for formatting and using lists, numbered paragraphs, and all kinds of things like that. You can use the pre-defined lists, or create your own. Absolutely invaluable for transactional attorneys, and a great substitute for the Word numbering. It will also allow you to create a table of contents for a document with only a couple of key strokes.

The Form Tool. Allows for fill in the blank forms for commonly used forms. I use it, for example, for the first draft of a conveyance, since I can fill in county, state, grantor, grantee, acknowledgment forms, etc. in a table, and then it fills in the template for me.

# HELPFUL PROGRAMS

## PART FOUR

PhraseExpress. I couldn't practice without it. It allows for drafting complete phrases, words, etc., and then using a simple code, to generate everything from a word to a complete paragraph. I've taken much of the commonly used paragraphs or sections of my agreements, and can plug them in as needed. For example, if I need a choice of law provision, I can type #shortlaw, and I will have a paragraph generated which allows me to plug in the county and state, the venue for the court, and, if needed, the federal venue.

This lets me avoid a lot of time making sure that the paragraphs are properly written, fully proofread, and are internally consistent. This cuts down on the turn-around time for documents, and is very helpful.

It is free for non-commercial use, and I'd urge you to try it out. It has a number of features that really make working much easier.



# WORD'S FEATURES

Learn Word.

Not just how to type, but use some of Word's features that make life so much easier.

Learn Styles. All kinds of places on the internet, YouTube, and many other sources will help you learn Word's styles. That allows you to format a document in a consistent manner, and makes life much easier for you.

Document Map. If you have used automatic numbering, running document map will allow you to navigate around a document with a keystroke.

Once you have numbered your document using Numbering Assistant, or Word's native numbering system, you can use Cross References. With Cross References, you can type in the word Section, and then follow it with a cross reference field to a particular numbered paragraph. If you move the paragraph later, or insert or delete a paragraph or section, the cross reference will automatically update.

# WORD'S FEATURES

Indexing will allow you to build a glossary of defined terms, and where they are located in the document.

Track Changes. Essential for lawyers. There are third party programs that do this, but Word's native track changes (redlining) program works very well. Discussed in Portfolio One, but you can find out all about it on the web.

Line Numbering. Very handy for when you need to send a document out to people, and they can comment to you by referring to a particular line, rather than laboriously counting down from the top of a paragraph.

Lexis/WestLaw. You can save portions of cases, articles, or documents, and, more importantly, citations to the clipboard or to a file, and insert them into your document.

# THINGS TO AVOID

## THINGS TO DO

For reasons I don't understand, lawyers seem to think that if they repeat synonyms several times, it makes for better writing. It doesn't. Neither do a lot of other things we do.

For example: defend, release, indemnify, and hold harmless. Indemnify is enough. Saying it four different ways doesn't make it any more effective.

Example Two: Ten Dollars, Ten Dollars and no/100 (\$10.00). Much easier just to use \$10.00.

Example Three: Thirty-three (33). 33 is fine. Experience tells me that many people don't proof both, so using just one is better. Personally, I use spelled out words for numbers one through ten and numbers for anything above that.

Example Four. John Smith (hereinafter referred to as "Smith"). Better: John Smith ("Smith").

Example Five: The parties to this Agreement are referred to individually as a "Party" and collectively as the "Parties." Totally pointless. If you can't figure out the use of party in the context of the Agreement, then you've done something seriously wrong.

# THINGS TO AVOID

## THINGS TO DO

Learn the Oxford Comma rule. I don't care if it is a, b, and c, or a, b and c. I use the first, but more importantly, I do it consistently in all instances. Inconsistency is a problem, so be careful. (PerfectIt5 will pick up the rule, and you can configure it the way you want.)

Spend the money, and buy Ken Adams' book, *A Manual of Style for Contract Drafting*, 4th edition. Best bet: buy it on Amazon, and load it on Kindle. Don't know if it is available on Apple books. Really, really helps.

It helps to read the Recommended Reading. You will see everything from good legal writing and incomprehensible babble. It might help.

# **YOUR FRIEND, YOU TUBE**

All of these programs are subjects of various YouTube videos, some of which delve into the more arcane parts of these programs.

When I see a program touted in a blog or some writer I follow, if it looks like something that I might want to use, I'll log into YouTube and find a video on it, which tells me pretty quickly if it really is something that I want to spend time learning. For those programs that I have installed, there usually is a YouTube video explaining how to do some particular aspect of the program.

You'll see a couple of these videos in the syllabus or in the suggested readings.

Finally, remember that you can always ask for help either from me, or from somebody that knows what to do.

# A FINAL THOUGHT

Read. A lot. Read anything you get your hands on, ketchup labels, Winston Churchill's books, comic books, and anything found in a library. The more you read, the more you will appreciate good, clear writing. I try to read several books each week, and it has helped a great deal over the years.

# LEGIBLE

A blog from Legalwriting.net by Wayne Schiess

HOME ABOUT

## Leave Behind These Words and Phrases

Here are nine legal words and phrases we can do without.

**My books:** [Legal Writing Nerd: Be One](#), [Plain Legal Writing: Do It](#)

This post is part of my effort to pull legal vocabulary into 2020. We certainly don't need to sound as though we're writing in 1908, let alone 1708. So here are a few legal words and phrases we can leave behind.

### ***comes now***

A lawyer once asked me to settle a debate at the office: "If there's one plaintiff, it's 'COMES NOW Rodney Jackson, ...' But if there are two plaintiffs, shouldn't it be 'COME NOW Rodney and Melinda Jackson, ...?'" Of course, I replied that the correct answer was to stop beginning pleadings with this archaic phrase. And drop the ALL-CAPS.

Yet more than a dozen lawyers have told me over the years that they choose to retain *comes now* in court filings. Why? The convention is so deeply entrenched, they say, that omitting *comes now* could make them look like novices—like lawyers who don't know how things are done. I grant the concern but it saddens me a bit.

### ***hereinabove, hereinafter***

Almost all the *here-* words should go (*herein, hereto, hereby*, etc.) but these two are the most annoying. They're old, they're often vague, and they're multi-syllabic. The legal-word expert Adam Freedman says that they arose from "experimentation. Lawyers and other literate folk enjoyed nothing better ... than inventing new words by putting together two or more old ones."<sup>[1]</sup>

Sometimes you can just omit them, sometimes you can use *above* and *below*, and sometimes you can specify what you're referring to and where to find it.

### ***inter alia***

Latin phrases that aren't terms of art, as this one isn't, ought to be dropped: *vel non*, *sub judice*, *sua sponte*, and others. Use an everyday-English equivalent: *and others*, *among others*, or *among other things*.

### ***instant case***

I still remember the sad look on a third-year student's face when I suggested that he use *this case*, *the current case*, *the Jackson case*, or even *here* in place of *the instant case*. "But *the instant case* sounds so ... legal," he said. All right. It's often important for a novice to "sound legal." But an experienced lawyer can abandon archaic language.

### ***-trix* suffix words: *administratrix, executrix, prosecutrix, testatrix***

In 1992, a legal-language expert named David Mellinkoff said these forms were "dying."<sup>[2]</sup> We can no longer wait around. Kill them off now. They're sexist, archaic, and hard to pronounce.

### ***in witness whereof***

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Harmless—but go ahead and delete this phrase from your form document.

### ***wherefore, premises considered***

Standard—but what does it mean? If it means “In light of everything just stated ...” why not use “Therefore ...”?

### ***know all men by these presents***

I’ll let someone else handle this one: Anyone who uses this phrase is an “unregenerate dinosaur” according to legal-drafting expert Ken Adams.<sup>[3]</sup>

### ***witnesseth***

This word has no place in modern legal drafting. If you prepare transactional documents, and you’re afraid to take it out, be brave. And look it up: you don’t have to take my word for it. Bryan Garner calls it an “antiquated relic.”<sup>[4]</sup>

For further guidance on outdated and useless legal words, see

- Kenneth A. Adams, *A Manual of Style for Contract Drafting*
- Adam Freedman, *The Party of the First Part: The Curious World of Legalese*
- Bryan A. Garner, *Garner’s Dictionary of Legal Usage*
- David Mellinkoff, *Mellinkoff’s Dictionary of American Legal Usage*

My books: [Legal Writing Nerd: Be One](#), [Plain Legal Writing: Do It](#)

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[1] Adam Freedman, *The Party of the First Part: The Curious World of Legalese* 25 (2007).

[2] David Mellinkoff, *Mellinkoff’s Dictionary of American Legal Usage* 600 (1992).

[3] Kenneth A. Adams, *Know All Men By These Presents*, Adams on Contract Drafting, <https://www.adamsdrafting.com/know-all-men-by-these-presents/>

[4] *Witnesseth*, *Black’s Law Dictionary* 1839 (10th ed. 2014)

This entry was posted in [Plain English](#), [Usage](#) on [August 3, 2020](#).

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