



## Maintaining Clarity Is the Bottom Line

# What's Up with "That"?

By Kristen L. Mayer

To use "that" or delete "that"—that is an often asked question. There appear to be two camps when the rule escapes the writer: chronic "that" deleters and conservative "that" includers. "That" deleters largely omit the word to keep word counts down, while "that" includers keep it in to maintain clarity and sentence flow. Some toggle in between. And when the question arises, the natural response is to look up the rule. Good luck. You won't find a bright-line rule on this issue in many of the foremost legal writing or grammar authorities because the proper use of "that" is rarely discussed. So what follows is what I have gathered from the stray sentence or two on the issue in the few sources that address "that."

Sometimes, the use of "that" is indeed optional. That is, if a sentence reads with the same meaning regardless of "that," so go ahead and delete it for brevity's sake.

*Example 1:*

The brief I filed last week was a masterpiece.

The brief *that* I filed last week was a masterpiece.

*Example 2:*

I will return the Brian Garner book I took out of your office when I feel like it.

I will return the Brian Garner book *that* I took out of your office when I feel like it.

*Example 3:*

The research assignment you gave me was less than clear.

The research assignment *that* you gave me was less than clear.

In all three examples, you can take or leave "that." The sentences have the same meaning.

But other times, you cannot delete "that" without losing clarity, and requiring your reader to return to the beginning of your sentence to figure out what on earth you meant to say. Consider the following:

*Example 4:*

They believed the associate, who prepared for five straight days, nailed the oral argument.

Four words into this sentence, the reader thinks it is about the associate's truthfulness. But by the end of the

sentence, the reader has to double-back to reread and confirm the true meaning of the sentence. "That" would fix the problem: **They believed *that* the associate, who prepared for five straight days, nailed the oral argument.**

*Example 5:*

**Sally Associate maintains Peter Partner's office is a mess.**

Again, six words into this sentence we think it is about Sally Associate's maintenance of Peter Partner's office, not what she thinks about his office. And again, "that" would fix the problem: **Sally Associate maintains *that* Peter Partner's office is a mess.**

But in ensuring clarity, don't go too far and "double that." This sentence, for example, is incorrect: **"Sally Associate knows that if she does not start her research by noon *that* she will not have enough time to write and edit the brief."**

This sentence only needs one "that"—the first one: **"Sally Associate knows that if she does not start her research by noon, she will not have enough time to write and edit the brief."**

The comma, as opposed to the word "that," after the word "noon" is correct.

But then again, before you remove a "double that" check for parallel construction. For example, this sentence is incorrect: **"Sally Associate confirmed she would take the deposition of the expert witness and *that* she would write the *Daubert* brief."**

In this sentence, Sally Associate is confirming two things, but the sentence uses only one "that." It would be better to use "that" twice: **"Sally Associate confirmed that she would take the deposition of the expert witness and *that* she would write the *Daubert* brief."**

"That" is why it is important not only to review your own written work very carefully, or even put it aside for a day or two, but perhaps have a fresh pair of eyes read your written work. You of course know what you mean when you write, but it may be woefully ambiguous to somebody else, or simply incorrect.

In short, while "that" may be optional at times, I always keep the word "that" in my writing for both sentence flow and to ensure clarity and meaning. While brevity is a primary goal in all legal writing, clarity is even more important because, no matter how concise you are, if your reader does not know what you are saying, the shortest brief will not win the day. And that's all about "that."

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