



Exactly What You Want to Say and Why

Of "Plain Speak"

By Kristen L. Mayer

We get tips all the time on how to become a better legal writer—there are blogs, books, seminars, columns and e-mail alerts. Most are driven toward the same end, and that end is short, direct "plain speak." Shed the legalese and all of those excessive words, and get to the point. To get to that point, I often think about how I would *say* what I need to *tell* a court in writing.

For example, how would you orally respond to this question: "Could you review this complaint filed in Ohio and let me know if these claims, filed two years and four months after the date of injury, are time-barred?" You would likely review the complaint, do the research, and show up at the door of the assigning lawyer's office and say, "The claims are time-barred under Ohio's two-year statute of limitations."

So why then do we often read this in a motion:

Now comes Defendant Ronco and respectfully moves this Honorable Court for summary judgment in its favor for the reason that plaintiff's claims are barred under the applicable statute of limitations. This is a product liability action. Plaintiff Veronica Whickersham Basshead (hereinafter "Basshead") has filed numerous, overlapping tort claims arising out of what she claims were alleged defects in a Ronco All-Purpose Shredder/Blender, all of which should be dismissed under Ohio Revised Code §2305.10. Section 2305.10 provides a two-year statute of limitations for product liability claims. The two years under §2305.10 begins to run from the date of injury. Basshead claims that she suffered second-degree burns when her Shredder/Blender shorted and burst into flames on January 1, 2007. It has been determined that Basshead did not file her complaint until January 5, 2009, four days after the two-year statute of limitations expired. Defendant therefore submits that it is entitled to summary judgment and that the Court should enter judgment accordingly, forthwith. (162 words)

Why not: "Plaintiff Veronica Whickersham Basshead's product claims are time-barred under Ohio's two-year statute of limitations because Basshead filed her complaint two years and four days after she sustained injuries.

Defendant Ronco is thus entitled to summary judgment," which is the way we would say it?

In this short, direct 36-word paragraph, two things are missing—legalese and a host of unnecessary words. As part of your routine editing, just strike the legalese—"now comes," "hereinafter," "forthwith" and other archaic terms still kicking around centuries beyond their expiry. We don't speak eighteenth-century legalese. If you were running late for a flight, would you jump in a cab and say: "To the airport at once! Make haste!" No. So, if we don't speak it, why would we write it?

The unnecessary words deleted from the edited, short version of the paragraph above are those conveying facts the reader doesn't need to know immediately, and those that simply serve little or no purpose—words and sentences that can be collapsed or removed altogether. For example, the short, direct paragraph sheds most of the facts, many of which will undoubtedly be repeated in the statement of facts and legal analysis sections, *e.g.*, the description of the product, what happened to the plaintiff, the claims asserted in the complaint, the text of the two-year statute, when a claim accrues and the critical dates. There is no need to clutter your motion with this information, and then repeat it all in the text. The 36-word sentence is enough. It tells your reader exactly what you want and why.

In addition to striking the unnecessary facts, the short, direct version of the paragraph omits unnecessary sentence preambles, such as, "It has been determined that..." It also replaces wordy terms within a sentence with less wordy, easier-to-read terms:

Replaced	With
For the reason that	because
This is a product liability action	Plaintiff's product claims
Defendant therefore submits that it is entitled	Defendant is thus entitled

Likewise, if you are a defendant moving for summary judgment, do you really need to write that you are moving for judgment in your favor? If you leave it out, will the court be confused and wonder whether you are moving for judgment in plaintiff's favor? No. And do you really need ("Basshead") after the plaintiff's full name? The next time you write "Basshead," is the court going to be

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confused that Basshead might be Ronco? I don't think so.

There is no question that getting from 162 words to 36 takes time and thoughtful editing, but this is what your reader wants. If you don't edit, you will likely lose your audience: "The best way to lose that audience is to write the brief long and cluttered." Hon. Ruth Bader Ginsburg (U.S. Supreme Court), *Remarks on Appellate Advocacy*, 50 S.C. L. REV. 567, 568 (1999). So take the time, sentence by sentence, and clear out the clutter. If the surplusage isn't jumping out at you, just put your pen down, think about how you would speak it, and then talk to your reader: write plainly and directly. Your reader will appreciate it. **FD**