The Scrivener: Modern Legal Writing

The Blackletter Law of Form

by K.K. DuVivier
© 1999 K.K. DuVivier

Substance, rather than form, should be the first concern of any lawyer drafting a brief. However, just as writing style can have an impact on the image we project, so can the overall impression we make be significantly impacted by the format of our brief.

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has revised the federal rules of procedure to make them more understandable and user-friendly. The revised rules became effective December 1, 1998. This article focuses primarily on the new requirements of Federal Appellate Rule 32, aimed at improving the readability of briefs.

Typeface and Readability

Although many forms of type may be legible, or clearly defined, they may not be readable. Readability describes ease of reading, specifically how some typefaces are suitable for long texts meant for continuous reading. People read text in groups of words at a time. Shapes made by the letters on a page enable the readers to recognize more easily groups of letters as words and thus to interpret the meaning of a text. If the print is too close together, it becomes too black and dense for easy reading.

The objective is to draw the eye to the next character in a word, but not to draw the words together or to draw the eye to the next line down. Most printed materials—newspapers, books, and professionally printed briefs—are printed in proportionally spaced, serif type for best readability.

Q: What is proportionally spaced type?
A: This paragraph is in Courier, a commonly used monospaced type that allot the same amount of space for every letter. Typewriters produce monospaced or equally spaced words. Pica typewriters produce ten characters per inch (10 cpi), and elite typewriters produce 12 cpi.

This paragraph is in Times New Roman, a proportionally spaced type designed in 1931 for The Times newspaper in London. Proportionally spaced type varies the horizontal space for characters depending upon the width of the character, so that a capital “M” is given more space than a lower case “l.” Most word processors have the capability to form proportionally spaced type.

Q: The new federal rules provide that the proportionally spaced typeface must include serifs, but that sans-serif type may be used in headings and captions. What are serifs?
A: This paragraph is in Times New Roman, which is a serif type. Serifs are the short lines that extend from the upper and lower ends of letters. The serifs emulate strokes of written words and help reinforce a group of letters as a word. They also help draw the eye horizontally to the next word instead of allowing it to wander to the line above or below.

This paragraph is in san-serif type. San-serif typefaces do not have additional marks at the ends of letters. San-serif type may require wider spacing to be more readable.

Q: The new federal rules require that proportionally spaced type must be 14 point or larger. What does 14 point mean?
A: Typesize is measured in points. There are approximately 72 points to an inch. This paragraph is in 14-point type. The larger the point size, the larger the typeface.

Emphasis and Readability

Variants add emphasis to parts of the text. Some of the most common methods of emphasizing a word or phrase are the following: (1) bold; (2) italics; (3) underlining; or (4) ALL CAPS. Be careful, however, because some methods of emphasizing words actually diminish readability.

K.K. DuVivier is a senior instructor of Legal Writing and Appellate Court Advocacy at the University of Colorado School of Law, Boulder.

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?
K.K. DuVivier will be happy to address them through The Scrivener column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401 or through e-mail to: duvivier@spot.colorado.edu.
Bold: The federal rules mention only the use of bold or italics for emphasis," suggesting that other forms of emphasis are discouraged. Bold, or boldface, is effective for emphasis, but it can affect readability because it is distracting.

Italics: Italics emulate handwriting and can be effective for emphasis if they are not too subtle. The advantage over boldface, underlining, or all caps is that italics are more readable. The federal rules require that either italics or underlining be used for case names.

Underlining: Both the federal rules and Bluebook Rule P1 permit writers to signal case names either by italic or underlining. However, some experts consider underlining "an ugly hangover from mechanical typewriters." Consequently, italics seem to be the preferred method of representing case names. Underlining is not recommended for emphasis because it over-emphasizes the horizontal line of the type and distracts from the words as groups.

ALL CAPS: HAVE YOU EVER WONDERED WHY MORE TYPERS SEEM TO APPEAR IN HEADINGS PRINTED IN ALL CAPITALS, OR ALL CAPS? LINES OF ALL CAPS ARE HARDER TO READ BECAUSE THEY ARE HARDER TO READ. THE CAPS PROVIDE LESS WHITE SPACE AND DISGUISE THE WORD SHAPES. THE PRELIMINARY DRAFT OF REVISED RULE 32(6) STATED THAT ALL CAPS COULD BE USED "ONLY FOR CAPTIONS AND SECTION NAMES." HOWEVER, THE FINAL VERSION OF THE RULE DOES NOT MENTION ALL CAPS, AND THIS MAY INDICATE THEY SHOULD BE AVOIDED ENTIRELY.

Overuse of emphasis is irritating and counterproductive. Furthermore, emphatic points become doubly irritating if there is too much variation in the style of emphasis. Decide which variant you are going to use, then use it consistently throughout.

Conclusion

Although we would like to believe that appearances do not matter, in fact, they do. Sloppy dress or an uncertain demeanor in court can make an unconscious statement. They can be interpreted as displaying a lack of professionalism or sincerity, thus undermining our otherwise sincere efforts to argue the law. Similarly, we should pay some attention to the form of our briefs. While the content is still our emphasis, we should not permit the form to undermine our substance.

NOTES


6. Id.


8. Id.

9. Collier and Cotton, supra, note 4 at 22. Here is another opinion from a discussion on underlining versus italics on the legal writing e-mail bulletin board from Chicago-Kent College of Law: "Many of the practitioners I know insist that underlining (rather than italics) in a brief is a signal of low culture... an indication that you don't take pride in your work product, since almost all lawyers have access to word-processing systems that will italicize." Thomas F. Blackwell of Chicago-Kent (10/19/98).

