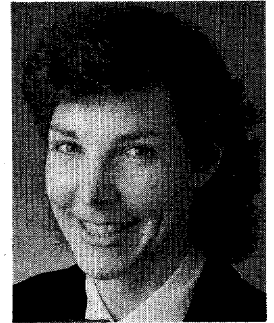


The Scrivener: Modern Legal Writing



Judges' Pet Peeves II



by K.K. DuVivier

The last *Scrivener* [November issue at page 2257] focused on a leading complaint that four Denver District Court judges identified when I polled them last summer. Recently, I have discussed legal writing problems with a few justices of the Colorado Supreme Court and judges of the Colorado Court of Appeals. This column focuses on some of the concerns voiced by these judges.

Here is one concern:

Follow the rules of procedure. How can the judge trust your interpretation of the law if you have not even read the basic procedural rules?

—Judge X's Complaint

You probably have heard this before: Pay attention to details. No matter how long you work on your research or how well you perfect your legal theory, your efforts can be undermined by the basics.

Failure to follow the format set out in the rules of procedure erodes your credibility. As with citation and spelling errors, format errors are easy to spot. They distract the reader from your argument. More significantly, format errors send to the reader the message that you are not careful. Many readers will conclude that your legal analysis is similarly questionable.

Review the relevant rules carefully. If Colo. R. Civ. P. 106 abolishes the remedial writ of *mandamus*, then it is inappropriate to title a document as such. Instead, relief should be requested under Colo. R. Civ. P. 106(a)(2).

If C.A.R. 28(b) refers to "Brief of the Appellee" and C.A.R. 28(c) refers to the appellant's "Reply Brief," the captions for either of these documents should not be "Answer Brief." Furthermore, C.A.R. 28(d) states that use of the designations "appellant" and "appellee" should be kept "to a minimum. . . ." The actual name of the parties or a descriptive generic, such

as "the employee" or "the taxpayer," is a reference that the reader can follow more easily.

Although some of the procedural rules may be difficult to decipher, a review of their tables of contents may provide guidance. Also, be aware that the rules have their own separate indices in volumes 7A and 7B of the Colorado Revised Statutes. Finally, several of the rules are followed by an appendix of sample forms, which can serve as models.

Here is another concern:

Lawyers do not cite enough law or know the policy behind the authorities. Give the judge a basis for ruling.

—Judge Y's Complaint

Lawyers should not write like judges. Although judicial decisions are often eloquent and well-written, they serve a different purpose from a brief or memorandum. Judges are presenting a resolution. They can cite authorities in a conclusive manner, without further explanation.

In contrast, lawyers must use legal authorities to persuade. Flesh out your statutes and cases. Limit your use of string citations. They do not tell the reader why a particular case is significant. If you must cite several authorities at once, try to help the reader sort each out by placing a brief summary in an explanatory parenthetical after the case.

Determine the reasoning behind an authority, and don't be afraid to make a policy argument. Most holdings can be narrowed by limiting them to the specific facts of the original cases. Broaden a holding, if appropriate, by focusing on the basis for the ruling and going beyond those original facts.

Give the judge a good reason to rule in your favor. Be cautious about frequent calls for equity, but be aware that an equitable result is paramount to many judges.

Here is a final concern:

Be courteous to opposing counsel and the court. Don't embroil the judge in an emotional battle.

—Judge Z's Complaint

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.

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Your briefs should reflect dignity and professional competence. As a lawyer, you may be forceful but not rude. Avoid any discourtesy to the court or your adversary. This just adds stress to the judge's already difficult job.

Even if your adversary misstates the facts or misleads the court, strident accusations are seldom necessary. Judges can

make their own decisions about a situation. They may not respond favorably to your urging that they should take action or that they should be outraged.

Although future columns will discuss additional pet peeves, the next *Scrivener* will get down to some more writing basics.

Boulder County Legal Services Available to Help Low-Income Residents and Senior Citizens

Boulder County Legal Services ("BCLS") is a non-profit organization that provides high-quality legal representation through counsel and advice to low-income residents and senior citizens in Boulder County. BCLS is a part of the Legal Aid Society of Metropolitan Denver.

BCLS provides services to those county residents who have civil and non-traffic legal problems. While its main emphasis is on providing emergency legal services, BCLS assists many senior citizens in non-emergency situations as well (for example, appealing an adverse determination by the Social Security Administration and the Social Services Department regarding eligibility and alleged overpayments). BCLS also can assist with housing problems (landlord/tenant disputes, nursing home payments, evictions, etc.), necessary utility service and access to necessary medical care (Medicare, Medicaid, health care allowances, home and community-based services, etc.). In addition, BCLS provides information on wills and probate, power of attorney, guardianship/conservatorship and estate planning.

Attorneys who know of Boulder County residents who need help from BCLS should direct them to make an appointment with BCLS through the Senior Center in their neighborhood or by calling BCLS at 449-7575.



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 - Collections
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**For more information about how you can help, contact CoLA
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