



# THE SCRIVENER: MODERN LEGAL WRITING

## Reputation

by **K.K. DuVivier**

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*A good name, like good will, is got by many actions and lost by one.*

—Lord Jeffery

Each spring, the Lawyering Process Program at the University of Denver College of Law invites judges to the law school for its annual Judges' Day. These judges share feedback with students about what lawyers do and don't do well. One of the most persistent themes in recent years has been "reputation." When asked where they start reading a pleading, few judges said they began on page one. Instead, many confessed that they, or their clerks, leaf to the last page of a brief and start by noting who authored the document.

Whenever you send out a piece of paper or, nowadays, an e-mail, your reputation flutters or flickers on the words you write. Perhaps you have an engaging presence or you are a crack litigator in the courtroom. Perhaps your tech department can help you use multimedia to make innovative presentations. Still, "ninety percent of what lawyers do is in writing."<sup>1</sup> Be vigilant about what your writing is saying to others about you.

### Clean and Accurate Documents

First, can you be taken seriously? Every product you submit must be clean and accurate. Although some documents may seem to be formalities, each serves a purpose and "[a]ll of the things [a court] gets, [it] reads."<sup>2</sup> Judge Jacob Hart, a federal district judge from Pennsylvania, recently sliced an attorney's fees in half because his written work was sloppy. Judge "Jacon [*sic*]" Hart noted that the court is distracted if it needs to "stop every three lines to wince over, or guffaw over"<sup>3</sup> typographical errors.

Use a spell-checker, but proofread as well. Although a spell-checker could not have spotted the following error, you can bet Judge Hart noticed when Mr. Puricelli, the offending attorney, placed Judge Hart's court in the "Easter District of Pennsylvania."<sup>4</sup>

### Respect the Court's Time

Second, are you respectful? Readers are rightfully resentful when your writing includes mistakes in citations or omissions that require them to spend additional time "deciphering the arguments and responding accordingly."<sup>5</sup> In the same federal case in Pennsylvania, Mr. Puricelli submitted an amended complaint with whole paragraphs and pages missing. Judge Hart concluded that "[h]is errors, not just typographical, caused the court a considerable amount of work."<sup>6</sup> In the judge's opinion, Puricelli's "complete lack of care in his written product show[ed] disrespect for the court."<sup>7</sup>

### Project a Positive Image

Third, do you understand your role? Tone is important, and you may be projecting a negative image, even though your spelling and citations are flawless. A lawyer's job is to be a zealous advocate, but in a logical and restrained manner. Judge Stephen Homer, of the Utah Court of Appeals, chastised a lawyer for "unrestrained and unnecessary use of the bold, underline, and 'all caps' functions of word processing or his repeated use of exclamation marks to emphasize points in his briefs."<sup>8</sup> To Judge Homer, "such techniques . . . really amount to a written form of shouting."<sup>9</sup>

Tone also transcends the mechanical. Although the U.S. litigation system is adversarial, this does not excuse personal attacks on opposing counsel. Remember that the court is interested in the legal arguments, not in personal vendettas. Magistrate Judge Schlatter of the U.S. District Court for the District of Colorado told me recently: "Such attacks not only do

#### DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: [kkduvivier@law.du.edu](mailto:kkduvivier@law.du.edu) or call her at (303) 871-6281.



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nothing to advance a lawyer's argument, they are the type of stuff upon which bad reputations are built."<sup>10</sup> If you are casting mud, you are bound to get dirty yourself. Don't tarnish your reputation by stooping to use derogatory terms or images.<sup>11</sup>

### Write With Integrity

Finally, are you honest? This is perhaps one of the more subtle aspects of reputation, but one that courts are keenly tuned into. Lawyers frequently must make choices about content: How should you characterize a fact; how represent a case? If the language the court used in a specific case appears to support expansion of recovery for emotional distress, but the case itself did not allow recovery, make sure your statement about the court's holding is accurate. Include both the positive and negative information in a way that instills trust in your representations in this particular brief, as well as in future briefs. Test your characterization by assuming opposing counsel will point out any inaccuracies, and avoid crossing the line with an unsupportable explanation.

### Conclusion

Remember that the risk of jeopardizing your good name may far outweigh the gain of winning a particular case. A single case, or even a single act, can destroy a reputation that took years to build. You can be a passionate and zealous advocate for your

client without forfeiting your integrity and balance. When the judges visit on Judges' Day this spring, make sure the stories they tell about you are heroic epics, not comedies or tragedies.

### NOTES

1. Judge Jacob Hart in National Public Radio interview (Thursday, March 4, 2004).

2. *Id.*

3. *Id.*

4. Judge Hart noted, "Considering the religious persuasion of the presiding officer, the 'Passover' District would have been more appropriate." See Hansen, "Filing Flub Costs Attorney," *ABA Journal* (e-Report), available at <http://www.abanet.org/journal/ereport/m5typo.html> (last checked 3/7/2004).

5. *Supra*, note 1.

6. *Id.*

7. *Id.*

8. Liptak, "Judge Finds a Typo-Prone Lawyer Guilty of Bad Writing," *The New York Times*, sec. A, col. 1 (March 4, 2004) at 16.

9. *Id.*

10. E-mail from Magistrate Judge O. Edward Schlatter (March 15, 2004). Judge Schlatter also notes, "Even subtle little digs ('if counsel would only take the time to read the law in this area . . .') turn a judge off."

11. See DuVivier, "Professional Courtesy," 25 *The Colorado Lawyer* 55 (Nov. 1996). ■



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